

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7696

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

B

KURT SCHMIEDER,

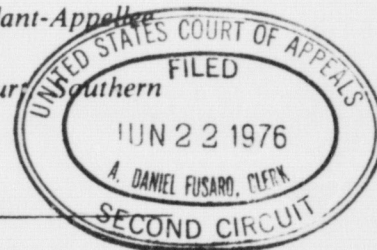
Plaintiff-Appellant,

vs.

LOUIS H. HALL, as executor of the estate of HELEN B.
DWYER, deceased,

Defendant-Appellee

*On Appeal from the United States District Court Southern
District of New York.*



JOINT APPENDIX
Volume I, 1a - 300a

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DOCKET ENTRIES RELEVANT TO NO. 75-7696 & 76-7038

1a

Schmieder vs. Helen B. Dwyer 69 Civil 1939

JUDGE KNAPP

PROCEEDINGS

Date Order
Judgment N.

6.6.69 Filed complaint and issued summons.

6.26.69 Filed summons and return Served Helen B. Dwyer on 5.16.69 by Mr Hall

6.5.69 Filed (in court) Order to Show Cause re: Extend time to answer. Ret. 6/5/69.

6.6.69 Filed MEMO.END. on Show Cause. Motion granted on default. SETTLE ORDER ON NOTICE. Tenney, J.

6.16.69 Filed Defts notice to take deposition of Pltff.

6.17.69 Filed stip and offer that defts motion is granted and defts time to answer to the complaint is extended to 7.15.69 Lasker, J.

7.7.69 Filed Defts notice of motion ret. 7/22/69 for an order to dismiss the complaint.

7.7.69 Filed defts memorandum of law in support of motion/

7.11.69 Filed stipulation adjourning motion now ret. 8/12/69 to 9/16/69.

7.16.69 Filed Defendant's Reply Memorandum.

7.15.69 Filed Plaintiff's Memorandum in opposition to motion to dismiss.

7.26.69 Filed MEMO.END. on motion papers filed 7/7/69. Motion is denied. So ordered. Frankel, J. (mailed notice.

7.16.69 Filed ANSWER to complaint. O&T

7.5.71 Filed deft's affdvt. and notice of motion Re; Substitute Executor Ret. 4-20-71

7.5.71 Filed deft's Memorandum of law in support of motion

7.5.71 Filed plttf's deposition dated 2-9-70 M/N

7.19.71 Filed plttf's statement pursuant to Rule 9(g) and affdvt. in opposition of the motion of Louis H. Hall, Jr.

7.19.71 Filed plttf's Memorandum of Law in opposition of motion

7.21.71 Filed OPINION # 37861--Motion to substitute Louis Hall, Jr. is granted for reasons indicated. Motion for summary judgment is denied on ground that there are many disputed issues of fact-Motley, J. m/n

7.12.71 Filed deft's NOTE OF ISSUE and statement of readiness.

7.11.71 Filed deft's notice of motion. Re: Summary Judgment Ret. 11-16-71

7.11.71 Filed memorandum of law on behalf of Louis H. Hall Jr. as Pre. Executor in support of his motion for summary judgment.

7.19.71 Filed plttf's affidavit in opposition to deft's second motion for summary judgment.

7.19.71 Filed plttf's memorandum of law in opposition to deft's second motion for summary judgment

7.30.71 Filed deft's affidavit in opposition to motion by plttf to strike this case from the trial calendar.

7.30.71 Filed plttf's notice of motion. Re: Strike from trial calendar and objection to note of issue.

7.30.71 Filed MEMO. END. on objections to note of issue overruled both parties waive right to jury trial. Equity action-transfer to non jury calendar. So Ordered. Pierce J. -mailed notice.

7.29.71 Filed MEMO. END. on motion filed 11-11-71 Deft's motion for summary judgment is denied. So Ordered. Bonsal J.

7.5.72 Filed 3rd ply deft objections to placing the case on the calendar.

7.6.72 Filed Order pursuant to cal. rules 6 and 13. Edelstein Ch. J.

7.11.72 Filed plttf's notice of motion. Re: discovery. Ret. 1-10-72

7.11.72 Filed MEMO. END. on motion filed 1-11-72 Upon condition that the two letters referred to in par. 4 (c) of the moving affidavit shall be supplied to plttf's counsel one week before commencement of the trial, this motion is denied. So Ordered. Frankel J. M/n

7.17.72 Filed Richard Oden, answering affidavit.

7.17.72 Filed Werner Galkowski Reply affidavit in support of motion under rule 9(1)

7.23.72 Filed stip and order extending time for pre trial conference to 28 March 1972 Frankel J.

7.26.72 Filed deposition of plttf dated 2-9-70

Continued on 2.7.72

JUDGE KNAPP

DATE	PROCEEDINGS
Oct 2, 72	Filed Order. Dft. moves for leave to amend its answer to add certain affirmative defenses, etc. So Ordered Knapp J.
Dec 1, 72	Filed Order. Motion to reargue is granted to the extent that the permission to plead laches and the statute of limitations is withdrawn. Motion to reargue otherwise denied. Knapp. J. (mailed notice)
Nov 13, 72	Filed Dft. Louis H. Hall Amended ANSWER.
Jan. 16-73	Filed Second AMENDED ANSWER of deft. Louis H. Hall, Jr. Preliminary Executor of t Estate of Helen B. Dwyer.
Jan. 16-73	Filed Answer to Interrogatories.
Jan. 29-73	Filed Notice of Motion Ret. before Knapp, J. in ROOM 501 on 1/26/73 at 2 PM. re: removal pur. to Title 28 USC 144, etc.
Jan. 29-73	Filed MEMO. END. on motion papers filed this day. Motion denied for reasons stated on the record in open court. So ordered. Knapp, J.
Feb 15-73	Filed Pltffs notice of motion, Re: compel answers to Interrogatories, ret before Knapp J.
Feb 15-73	Filed memo endorsed on motion papers dtd. 2/15/73. Deft shall serve answers to the Interrogatories to the extent and in the manner set forth in the report of the magistrate Jacobs dtd. 2/6/73. So Ordered Knapp J.
Feb 20-73	Filed report of magistrate.
Apr. 4, 73	Filed transcript of proceeding, dtd. 1/26/73.
Apr. 19, 73	Filed transcript of proceedings, dtd. 1/26/73.
Apr. 30, 73	Filed notice of motion Ret. May 4, 73 At 10 a.m. Room 619 Re: for an order directing an open commission to issue to consul at Stuttgart Germany.
Apr. 30, 73	Filed notice of motion;; Ret. May 4, 73, at 10 a.m. Room 619 Re: approving under disciplinary law the employment of James P. Duffy, III.
May 1, 73	Filed Affidvt. of James P. Duffy, III; Re. admission to probate the will of Helen B. Dwyer.
May 1, 73	Filed Answering affidvt. of Werner Galleski; Re opposition to defts. motion under Rule 16.
Jul. 3, 73	Filed ORDER: Pltf. moves for reconsideration of the report of Magistrate Jacobs dated May 22, 1973, recommending that the Court deny pltf. further discovery, etc. etc. As to which party should bear pltfs. expenses of pltfs. further deposition, Magistrate Jacobs apparently did not have called to his attention the condition of my order dated Nov. 1, 1972, which stated: "The Court grants defts. application to amend and to add certain defenses) upon condition that deft. pay all expenses of pltfs. further deposition in Germany provided that pltf. show to the Court's satisfaction the necessity of such deposition." Therefore, the Magistrate's recommendations are modified to the extent that deft. bear pltf's. actual expenses in taking pltfs. own deposition. ***Etc. etc.
	As to the balance of the motion regarding additional depositions, I see no need for disturbing the Magistrate's report, and the motion is, in this respect, denied. SO ORDERED. KNAPP, J. (n/m to 2 attys)
Aug. 13-73	Filed pltf's affidavit & notice of motion Re: Trial counsel ret, 8-24-73.
Aug 23-73	Filed deft's affidvt in opposition of the motion of J. P. Duffy seeking leave to appear as trial counsel for the pltf.
Aug 23-73	Filed deft's memorandum in opposition to motion of pltf re: atty
Dec. 28-73	Filed Order that motion by J.P. Duffy, III to participate as trial counsel for pltf. is denied. A conference is scheduled in the for January 9, 1974, at 2: P.M. in courtroom 128. Knapp, J.

Page #3

PROCEEDINGS

Dr
Jud

Jan. 17-74 Filed affidavit Of L.H. Reilly Re: Affidavit of J.P. Duffy, III.
Jan. 30-74 Filed supplemental affidavit of James P. Duffy, III, in support of, motions to reargue.
Feb. 20-74 Filed Deft's Affidvt & Order to Show Cause re: enjoining and restraining James P. Duffy, III, Esq, etc, as indicated ret. 2/20/74.
Feb. 20-74 Filed deposition of plttf. taken in Loerrach, Germany on 9-5-6-73 . m/n (Filed 2 15 74)
Mar. 5-74 Filed consent & order to substitution of attys for deft. Knapp, J.
Mar. 8-74 Filed deft's affidavit & notice of cross-motion setting this matter down for an early trial date ret. 3-14-74.
Mar. 8-74 Filed deft's memorandum of law.
Jun. 4-74 Filed Order: Subject to the conditions noted in footnotes 2 & 3, the motion to disqualify Mr. Duffy is denied. So ordered. Knapp, J. m/n
Jun. 5-74 Filed plttf's affidavit & notice of motion to serve & file a supplemental complaint ret. before Knapp, J.
Jun. 5-74 Filed Memo-endorsed on plttf's motion filed this date Re: Supplemental, complaint. Motion denied. So ordered. Knapp, J. m/n
Jun. 7-74 Filed Order that plttf's has applied for a three-Judge court in order to enjoin certain action by the New York County Surrogate's court, The application is denied. m/n So ordered. Knapp, J.
Jul. 10-74 Filed deft's affidavit & notice of cross-motion for summary judgment, ret. 6-25-74.
Jul. 10-74 Filed Memo-endorsed on deft's motion for summary judgment: Motion, denied. Knapp, J. D/H
Jul. 10-74 Filed plttf's affidavit & notice of motion for summary judgment, ret. 6-10-74.
Jul. 10-74 Filed Memo-endorsed on plttf's motion for summary judgment: Motion denied. Knapp, J. m/n
7/12/74 Filed transcript of record of proceedings, dated 2/20/74
8-29-74 Filed transcript of record of proceedings, dated 3/14/74
9-12-74 Filed transcript of record of proceedings dated 9-18-74.
Nov. 6-74 Filed transcript of record of proceedings dated 9-18-74.
Nov. 20-74 Filed Memorandum & Order #41456: Deft's motion to disqualify Mr. Duffy is denied but the court, on its own motion, will disqualify Mr. Duffy as counsel for plttf. So ordered. Knapp, J. m/n
Mar. 11-75 Filed Suggestion of interest on behalf of the USA, & affdvt of Irving Jaffe.
Mar. 11-75 Memorandum of pointss & authorities in support of the U.S.' suggestion of interest.
03-06-75 Filed Plttfs interrogs.
03-06-75 Filed " answer to intervention.
6-03-75 Filed ORDER to SHOW CAUSE re: order joining U.S. or the Atty. Gen'l. as a party to this action, etc., summary judgment ret. 6-13-75. Knapp, J.
6-03-75 Filed memo. of law in support of plttf.'s motion to join the Govt. as a party to the action, and in support of plttf.'s motion for summary judgment against the Govt. D
6-03-75 Filed deft's answers to interrogs.
6-12-75 Filed deft's cross-motion & affidavit to dismiss complaint ret. 6-13-75.
6-12-75 Filed U.S.A memorandum of law in opposition to plttf's motion ret. 6-13-75
6-18-75 Filed plttf's reply memorandum of law in support of his motion for summary judgment.
6-18-75 Filed affidavit of J.P. Duffy, III in reply to Gov'ts papers.

(Cont'd p. 4)

THREE PART

DATE	PROCEEDINGS
06-23-75	Filed Memo End. on Order to Show Cause of 6/3/75. Motion to join Atty Gen. of US as an indispensable party pursuant to Rule 19 of FRCP is denied. Motion for summary judgment against Atty Gen is therefore inappropriate and is also denied. So Ordered. Knapp, J(mn)
06-23-75	Filed Memo End. on motion of 6/12/75. Motion to dismiss complaint for failure to join an indispensable party is denied. Knapp, J(mn)
06-30-75	Before Knapp, J. Non-Jury trial begun.
07-01-75	Trial continued & concluded. Decision reserved.
06-27-75	Filed pltf's trial & evidence memorandum.
07-17-75	Filed pltf's post trial memorandum.
07-23-75	Filed reply memorandum.
7/30/75	Filed transcript of record of proceedings, dated 6/30/75 7/1/75
7/30/75	Filed transcript of record of proceedings, dated 7/1/75
7/30/75	Filed transcript of record of proceedings, dated 6/30/75
10-01-75	Filed Opinion #43171: We find that pltf. has no standing to pursue this action & in the alternative, that pltf. has failed to satisfy his burden of proof. Accordingly, the complaint must be dismissed. The foregoing shall constitute the court's findings of fact & conclusions of law pursuant to rule 52(a) of the F.R.C.P. So ordered. Knapp, J. m/n
10-06-75	Filed Judgment: Ordered that deft. Louis H. Hall, Jr. as preliminary Executor of the Estate of Helen B. Dwyer, have judgment against the pltf. dismissing the complaint. Judgment Ent. Clerk m/n
10-22-75	Filed pltf's affidavit & notice of motion to grant pltf. a new trial ret. 11-14-75. (Ent. 10-07-75.)
10-22-75	Filed pltf's objections to deft's bill of costs.
10-24-75	Filed Bill of costs as taxed in the sum of \$838.23, in favor of deft & added to the judgment. Docketed as judgment #75,841.
Oct. 31-75	Filed Memo-endorsed on pltf's motion filed 10-22-75 granting a new trial: Motion denied on the grounds that is untimely under rules 52 & 59 of the FRCP, moreover, it is without merit. So ordered. Knapp, J. m/n
11-11-75	Filed pltf's notice of motion granting him a new trial ret. 11-21-75.
11-11-75	Filed pltf's memorandum in support of motion ret. 11-21-75.
11-14-75	Filed Memo-Decision #43400: Pltf. correctly points out that the court was in error in declaring pltf's motion for reargument to have been untimely. The court, however, adheres to its view that the motion is wholly without merit. The motion is, accordingly denied So ordered. Knapp, J. m/n
12-03-75	Filed pltf's affidavit & notice of motion for relief from judgment ret. 12-12-75.
12-11-75	Filed Memorandum & Order #43518: The second motion for a NEW Trial is accordingly denied. So ordered. Knapp, J. m/n
12-12-75	Filed pltf's notice of appeal to the USCA from final judgment ent. 10-06-75. Mailed copy to Turchin & Popper.
12-12-75	Filed Bond undertaking for costs on appeal in the sum of \$250.00 by National Surety Corp.
12-15-75	Filed Pltf's notice of motion for reargument of denied motion ret. 1-23-76.
12-15-75	Filed pltf's memorandum in support of his motion for reargument.
12-15-75	Filed pltf-Appellant notice of motion for extension of time to transmit record to U.S.C.A.
12-23-75	Filed affidavit of J.S. Martin, Jr. in opposition to pltf's appellant motion

PROCEEDINGS

PROCEEDINGS

12-22-75 Filed Memorandum & order #43573: Pltff's motion for reargument is denied because this court is without jurisdiction. The companion motion for extension of time to transmit the record on appeal is also denied. So ordered. Knapp, J. m/n

12-31-75 Filed Defendants Post-trial reply memorandum.

12-31-75 Filed Defts. pre-trial memorandum.

12-31-75 Filed Notice of motion to amend answer.

12-31-75 Filed Memo of law in support of motion to amend.

12-31-75 Filed Pltffs. notice of motion for reconsideration of motion to amend.

12-31-75 Filed Pltffs. Amended & Supplemental interrogs.

12-31-75 Filed Defts. memorandum in opposition to motion to dismiss.

12-31-75 Filed pltffs. interrogs.

12-31-75 Filed defts. affdvt. in support of motion purs. to T28 USC Sec. 144.

12-31-75 Filed defts. answers to interrogs.

12-31-75 Filed defts. notice of motion re pre-trial proceedings schedule.

12-31-75 Filed pltffs. second reply affdvt.

12-31-75 Filed defts. memroandum in response to letter of pltff.

12-31-75 Filed affdvt. in support of motion.

12-31-75 Filed order to show cause to award costs & damages to James Duffy.

12-31-75 Filed James Duffy's affidavit in opposition.

12-31-75 Filed deft. memorandum of law.

12-31-75 Filed memo in opposition to motion for 3 judge court.

12-31-75 Filed pltffs memo of law in support of motion.

12-31-75 Filed pltffs. proposed pre-trial order.

12-31-75 Filed defts. proposed pre-trial order.

12-31-75 Filed defts. memo of law.

12-31-75 Filed pltffs. trial & evidence memorandum.

12-31-75 Filed defts. trial memorandum.

12-31-75 Filed defts. post trial memo.

12-31-75 Filed pltff. post trial memorandum.

A close-up of a handwritten capital letter 'F' on lined paper. The letter is formed with dark ink, showing a vertical stem and two horizontal strokes. The top horizontal stroke is slightly angled upwards to the right. The paper has horizontal lines, and the letter is positioned between two of them.

1946 OCT 1
 ALBANY T. ROBERTSON
 DEC 17 1946

DATE	NR.	PROCEEDINGS
01-30-76	1	Filed complaint and issued summons.
02-19-76	2	Filed deft's affidavit & notice of motion for judgment dismissing the complaint ret. 2-27-76.
02-19-76	3	Filed deft's memorandum of law in support of motion for judgment ret 2-27-76.
02-25-76	4	Filed Pltffs affdvt opposint defts's motion for summary judgment.
02-25-76	5	Filed " Preliminary & Tentative Statement under Rule 9(g) of Gen. Rules of Court in opposition to deft's motion for summary judgment.
03-09-76	6	Filed plttf's third affirmation in opposition to deft's summary judgment motion.
03-15-76	(7)	Filed Memorandum & Order #44060: Deft. moves to dismiss complaint on grounds of res judicata. I grant deft's motion to dismiss the complaint on grounds of res judicata. So ordered. Knapp, J. m/n
04-28-76	(8)	Filed plttf's affidavit & notice of motion for leave to serve amended complaint ret. 5-7-76.
04-28-76	(9)	Filed plttf's memorandum of law in support of motion to amend complaint ret. 5-7-76.
04-28-76	(10)	Filed plttf's statement under rule 9(g) in support of motion.
05-05-76	---	Filed Memo-endorse on motion filed 4-28-76 #8 Re: judgment: Motion denied as to prayer for relief demanded in paragraphs (a), (b) & (d) granted as to the relief demanded in paragraph (c) The Clerk is directed to enter judgment dismissing the complaint in accordance with the memorandum & order dated 3-12-76. So ordered. Wyatt, J. m/n
05-11-76	(11)	Filed Judgment: Ordered that def. deft. Louis H. Hall, Jr. as Executor of the Estate of Helen B. Dwyer have judgment against plttf. Kurt Schmieder, dismissing the complaint on the grounds of res judicata. Judgment Ent. Clerk. m/n
05-26-76	(12)	Filed plttf's notice of appeal to the USCA from final judgment entered 5-13-76. Mailed copies to Turchin & Topper, Martin, Obermaier & Morvillo & Berg & Duffy. Ent. 5-13-76

A TRUE COPY
 RAYMOND F. BURCHARDT, Clerk

By E. A. Becken
 Deputy Clerk

6-11-76

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KURT SCHMIEDER,

PLAINTIFF, :

- against - :

COMPLAINT

HELEN B. DWYER,

DEFENDANT. :

Plaintiff, by his attorney WERNER GALLESKI, for his complaint against the above named Defendant respectfully alleges upon knowledge, except as to matters set forth in paragraphs 2, 8 and 10 which are alleged upon information and belief:

1. Plaintiff is a citizen and resident of the Federal Republic of Germany.
2. Defendant is a citizen and resident of the State of New York.
3. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.
4. Plaintiff lived and worked in the United States for many years and returned to his birth place in Germany in 1911, leaving his investments in the United States as securities and a bank deposit there.
5. Prior to World War II, viz., in or about 1938 he was advised by New York counsel and a New York certified public accountant in regard to his fears that the Nazi Regime might marshal his U.S. assets for the purpose of the objectives of that regime, and in particular in regard to his desire to find a way of protecting his assets.
6. In following the advice of said New York counsel and certified public accountant, Plaintiff transferred his said cash and securities to the Defendant who then was a secretarial employee of the said New York counsel, and whom Plaintiff had never met or heard before of.

In doing so he relied upon the said counsel's opinion that this transfer would be impregnable at law, leaving a mere moral obligation on the part of the Defendant to return the property to the Plaintiff after the emergency would have passed.

7. During World War II Plaintiff had no communication with anyone in the United States and upon the close of the war he was sentenced to prison for anti-communist activities in the Russian-Occupied Zone of Germany where he lived. Meanwhile his American assets were seized by the U. S. Government as enemy alien property.

8. The Defendant filed an action for the return of said property to her, claiming that Plaintiff had made a gift to her and that she was the sole beneficial owner thereof.

9. Plaintiff was not in a position, being in the Soviet Zone, to claim an interest in the said litigation and was promised that, if he assisted in the suit of the Defendant, his moral interest would be preserved. Based on the said promise, Plaintiff cooperated with the Defendant.

10. Defendant received part of said property from the U. S. Government by way of a compromise.

11. When Plaintiff came out of the Soviet Zone and was finally able to assert his interest in this money, he was unable to obtain any information as to the whereabouts of the Defendant, whom he has now located.

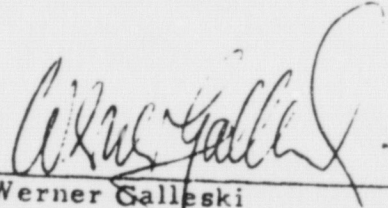
12. This action is to impress a constructive trust upon his said property now in the hands of the Defendant, for a respective accounting and for the delivery of such property.

13. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

- (a) That a trust be impressed upon the property delivered by the U. S. Attorney General to the Defendant;
- (b) That the Defendant be enjoined and stayed from disposing of any part of said trust property until such time as a determination is had of Plaintiff's rights, and the amounts of Plaintiff's interests are established, adjudged and paid;
- (c) That Defendant be directed and compelled to account to the Plaintiff for the said trust property as well as for all income and profits accrued thereon;
- (d) That the Defendant be decreed, adjudged and directed to pay and deliver over to the Plaintiff the said property and all profits and proceeds directly or indirectly derived therefrom which may be found to be due to the Plaintiff;
- (e) That the Plaintiff has such other, further and different relief as to this court may seem just and proper in the premises, together with the costs and disbursements of this action.

Dated, May 5, 1969


Werner Galleski
Attorney for Plaintiff
70 Pine Street
New York, N. Y. 10005
Phone: 943 0076

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
KURT SCHMIEDER,		:	<u>ANSWER</u>
	Plaintiff,	:	Index No. 69 Civ. 1939
-against-		:	<u>DEFENDANT, HELEN B. DWYER,</u>
HELEN B. DWYER,		:	<u>DEMANDS A TRIAL BY JURY</u>
	Defendant.	:	
-----X		:	

Defendant, Helen B. Dwyer, answering plaintiff's complaint herein:

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint herein.

SECOND: Admits the allegations contained in paragraph "2" of the complaint herein.

THIRD: Admits that the amount claimed to be in controversy as alleged in paragraph 3 of the complaint herein is in excess of \$10,000.00.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "4" and "5" of the complaint herein.

FIFTH: Denies each and every allegation contained in paragraph "6" of the complaint herein except admits that plaintiff made a gift of certain property to defendant who was at the time a secretary in a law office.

SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the complaint herein except admits the U.S. Government seized a portion of defendant's assets.

SEVENTH: Denies each and every allegation contained in paragraph "8" of the complaint herein except admit that as owner of the property seized defendant commenced an action for its return.

EIGHTH: Denies each and every allegation contained in paragraph "9" of the complaint herein.

NINTH: Denies each and every allegation of paragraph "10" of the complaint herein except admits the settlement of the U.S. Government proceeding.

TENTH: Denies the truth of the allegations contained in paragraph "11" of the complaint herein, except admits that plaintiff located defendant.

ELEVENTH: Denies each and every allegation of paragraphs "12" and "13" of the complaint herein.

WHEREFORE, defendant, Helen B. Dwyer, demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
October 9, 1969.

OWEN & TURCHIN

By: 

Richard Owen
A Member of the Firm
Attorneys for Defendant
Helen B. Dwyer
Office & P.O. Address
60 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KURT SCHMIEDER,

Plaintiff,

-against-

LOUIS H. HALL, Jr. as Preliminary
Executor of the Estate of HELEN
B. DWYER,

Defendant.
-----X

SECOND AMENDED ANSWER

69 Civ. 1939
Cal. No. 713(4)

Defendant, Louis H. Hall, Jr., as Preliminary
Executor of the Estate of Helen B. Dwyer, answering plaintiff's
complaint herein:

FIRST: Denies knowledge or information sufficient
to form a belief as to the truth of the allegations contained
in paragraph "1" of the complaint herein.

SECOND: Admits the allegations contained in
paragraph "2" of the complaint herein.

THIRD: Admits that the amount claimed to be in
controversy as alleged in paragraph "3" of the complaint herein
is in excess of \$10,000.00.

FOURTH: Denies knowledge or information sufficient
to form a belief as to the truth of the allegations contained
in paragraphs "4" and "5" of the complaint herein.

FIFTH: Denies each and every allegation contained
in paragraph "6" of the complaint herein.

SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the complaint herein except admits the U.S. Government seized a portion of defendant's assets.

13a

SEVENTH: Denies each and every allegation contained in paragraph "8" of the complaint herein except admits that as owner of the property seized defendant commenced an action for its return.

EIGHTH: Denies each and every allegation contained in paragraph "9" of the complaint herein.

NINTH: Denies each and every allegation of paragraph "10" of the complaint herein except admits the settlement of the U.S. Government proceeding.

TENTH: Denies the truth of the allegations contained in paragraph "11" of the complaint herein, except admits that plaintiff located defendant.

ELEVENTH: Denies each and every allegation of paragraphs "12" and "13" of the complaint herein.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE

TWELFTH: Vesting Order 12528 issued by the Attorney General of the United States, vested all possible interest plaintiff had in the securities claimed in this action and the transfer of 55% of the securities to Mrs. Dwyer pursuant to the settlement of her action eliminated any possible interest plaintiff could possibly have had in these securities.

14a

AS AND FOR A SECOND COMPLETE AFFIRMA-
TIVE DEFENSE

THIRTEENTH: The alleged cause of action stated in the complaint may not be enforced because of the doctrine of "unclean hands" and that plaintiff seeks to enforce an alleged "agreement" to defraud and commit crimes against the United States of America and plaintiff seeks to benefit from his false statement under oath, dated June 1, 1948, which he executed for specific use in Mrs. Dwyer's action in the United States District Court for the District of Columbia.

WHEREFORE, defendant, Louis H. Hall, Jr., as Preliminary Executor, demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
January 2, 1973.

OWEN & TURCHIN

By: 

A Member of the Firm
Attorneys for Defendant
60 East 42nd Street
New York, New York 10017
(212) MC-1-0420

DEPOSITION OF KURT SCHMIEDER ON FEBRUARY 9, 1970 (Filed
April 5, 1971)

15a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

036 L 101

-----X

KURT SCHMIEDER,

Plaintiff,

-against-

HELEN B. DWYER,

Defendant.

-----X

Examination Before Trial of plaintiff, KURT SCHMIEDER,
taken in Frankfurt-an-Main, Germany, the 9th day of February,
1970, pursuant to Notice and Stipulation between the parties.
The examination is to be transcribed in America, three copies
to be furnished to counsel for plaintiff, and the examination
to be sworn to before any United States Consul.

It is stipulated that counsel for defendant, RICHARD
OWEN, as a Notary Public of the State of New York, shall administer
the oath to the witness and the interpreter, for purposes of
taking the examination. All other objections, etc., as permitted
by the Civil Practice Act and the Federal Rules applicable in
the Southern District of New York are reserved to the parties.
The time of this hearing is 9:15 a.m.

APPEARANCES:

Attorneys: Werner Gallieski and
Robert H. Reiter - for
plaintiff,

Witness: Plaintiff, Kurt Schmieder

Attorneys: Richard Owen, Esq., of
Owen & Turchin, for
defendant

Interpreter: Heinz K. Schuh

The Witness and the Interpreter were both duly sworn.

DIRECT EXAMINATION BY RICHARD OWEN

Q. Mr. Schmieder, you are the plaintiff in a law suit in the Federal Court in New York against a lady named Helen B. Dwyer, are you not?

A. Yes sir.

Q. In that lawsuit it is your claim, is it not, that certain property was transferred by you to Mrs. Dwyer.

A. Well, my property was transferred to Mrs. Dwyer.

Q. Mr. Schmieder, have you a list that you can furnish of the property that you claim was transferred to Mrs. Dwyer identifying it so that it could be specified?

A. I must answer, No.

Q. Mr. Schmieder, what property is it that you claim that Mrs. Dwyer got in which you now claim a property interest?

A. Whatever Mrs. Dwyer had released from Washington.

Q. Mr. Schmieder, in the year 1934, or perhaps 1935, did you own certain property in the United States of America?

A. Yes.

Q. Now, in that year, did that property consist of stocks and bonds, or real estate, or of what nature was it?

A. Mainly stocks and bonds - stocks and bonds - almost always stocks and bonds.

Q. And, where were those stocks and bonds located?

A. With New York Trust Company - now it's Chemical tied in too.

Q. And, in the years 1934 and 1935, were those securities registered in your name?

A. Yes.

Q. And, did you receive dividend income from these securities?

A. Yes.

Q. Now, did there come a time where these securities were transferred to your sister-in-law Mrs. Jennie Bochmann?

A. Yes, sir.

Q. And when did you transfer these securities to Mrs. Bochmann?

A. 1934.

Q. Now, after these securities were transferred to Mrs. Bochmann, did you continue to receive the dividend income from them?

A. Yes.

Q. When you transferred these to Mrs. Bochmann, she was living in Lugano, Switzerland, is that correct?

A. Yes.

Q. And, did you transfer the title to these securities to her by some instrument such as an endorsement on the stock certificate, or a stock power?

A. I don't know that the New York Trust Company did that.

Q. Mr. Schmieder, there is no question in your mind that you actually transferred ownership of these securities to Mrs. Bochmann, is there?

MR. REITER:

We would note an objection that the question of ownership is one of the issues in this case and is a legal conclusion which should not properly be asked of the witness.

A. Well, directly the ownership -- it was a transfer of property but the ownership remained with me.

Q. Mr. Schmieder, do you have any letters - correspondence of any kind between yourself and Mrs. Bochmann around the years 1934 and 1935 concerning this transfer of these securities to her in whatever fashion you say you did?

A. No.

19
Q. Mr. Schmieder, where were you living in the years 1934 and 1945?

A. In Me^zeranc, Saxony. *H. G. pri*

Q. Did you have a meeting with Mrs. Bochmann in which ~~you~~ discussed with her the circumstances under which you were going to transfer this property to her?

A. Yes, sir.

Q. And, what did you and Mrs. Bochmann say to each other at this meeting?

A. Well, I asked her to have the papers transferred into her name.

Q. And she said that that was acceptable to her, is that correct?

A. At that time, yes.

Q. Is Mrs. Bochmann alive today?

A. No, she died.

Q. Now, Mr. Schmieder, do you remember a man named, Louis Hall, Sr.?

A. Yes.

Q. And when did you first meet Mr. Hall, Sr.?

A. I met him for the first time around 1928 in Leipzig - and that at the recommendation of the Mr. Graupner, Sr.

Q. And do you remember meeting with Mr. Hall in the year 1928 and 1929 and discussing with him setting up a corporation in the

A. That is more likely.

Q. Now, from the time that these securities from the New York Trust Company account were put into the Stoneleigh Corporation, did you receive any income from either those securities

or the Stoneleigh Corporation?

A. I think that the income flowed back to New York Trust Company to the account.- That's possible.

Q. To whose account?

A. Well, the account will still have read "Jennie Bochmann".

Q. Did you pay any United States income taxes on any income earned from the Stoneleigh Corporation?

A. Well, this income tax computation was being supervised by Mr. Graupner and Mr. Hall. I don't know anything about it.

Q. No, the question is, Mr. Schmieder, did you pay any United States income taxes, let us say in the years 1935 and '36 on any income received from the Stoneleigh Corporation?

A. Well, I personally did not.

Q. Mr. Schmieder, do you recall who the officers of the Stoneleigh Corporation were?

A. No. I only found out now that Mr. Graupner, Jr. had been an officer there, and this I didn't know before.

Q. Did you have a conversation with Mr. Hall at the time the Stoneleigh Corporation was set up, concerning the Stoneleigh Corporation?

A. No! Mr. Graupner did that.

Q. Did there come a time where it was decided that the securities in the Stoneleigh Corporation should be transferred to somebody other than Mr. Bochmann?

MR. REITER: I object to that question on the ground that at that time the securities were in the name of the corporation rather than the name of Mrs. Bochmann.

A. Yes, that had been later on.

Q. Just to make sure that we have no problems with form here, ~~of~~ you discuss, Mr. Schmieder, with anybody, transferring the securities that were in the Stoneleigh Corporation to anyone in or around the year 1938 or 1939?

A. Yes.

Q. With whom did you have a discussion about this?

A. First with Mr. Graupner, Sr. and also later at Leipzig, with Mr. Hall, Sr.

Q. And what did you say to Mr. Graupner when you first talked to him about this subject?

A. My sister-in-law, ^X in the United States, under her own ^{H. G. pr} name, because she had other papers and she feared that she would have differences with Swiss authorities.

Q. Did she tell you this?

A. Yes.

Q. Now, did you have a discussion with Mr. Graupner as to whom the securities in Stoneleigh should be transferred?

A. Yes.

Q. And what did you and Mr. Graupner discuss on that subject?

A. Mr. Graupner thereupon returned to America from his summer leave and discussed the matter with Mr. Hall, that the name on the account should be changed.

Q. Now, before Mr. Graupner went to America you say you and he discussed this. Did you and Mr. Graupner discuss in whose name the securities should be put?

A. No. Mr. Graupner wanted first to discuss that with Mr. Hall.

Q. Mr. Schmieder, might I refresh your recollection that you asked Mr. Graupner if his son would accept the securities?

MR. REITER: (I would object to the complete line of questioning here on the basis that it presupposes that the securities themselves were transferred when in fact it was only the stock of Stoneleigh Corporation which was transferred. Therefore, the questions are misleading. The account was not really changed):

MR. OWEN: No, I'm not asking what was in fact done. I'm asking Mr. Schmieder what he discussed doing, and what his conversations were as to what he discussed doing, not was in fact done.

Q. Mr. Schmieder, may I refresh your recollection that you had a discussion with Mr. Graupner concerning his son receiving either the stock of Stoneleigh or the stock that was owned by Stoneleigh?

A. No. This I do not know.

Q. Did you ever discuss with Mr. Hall that Mr. Hall's son should take this property?

A. No.

Q. Mr. Schmieder, who decided who was to take this property?

A. This was decided by Mr. Graupner and Mr. Hall.

Q. And did Mr. Graupner or Mr. Hall discuss with you that they would decide this?

A. Yes, of course. I was in agreement therewith.

Q. Did you yourself suggest anyone to whom the property might be transferred?

A. No.

Q. Now, I believe you said that you discussed the matter first with Mr. Graupner and then that Mr. Graupner went to America and discussed the matter with Mr. Hall. Did you discuss the matter yourself with Mr. Hall before this transfer was made?

A. Well, in 1938 I talked to Mr. Hall in Leipzig and there he submitted to me just as he had agreed with Mr. Graupner.

Q. And what did he submit to you that he had agreed with Mr. Graupner?

A. Well, that he had - I believe it was a secretary he had there and, that she agreed to have the account transferred into her

P. 110.

Q. Did Mr. Hall tell you at that time that the transfer had to be a complete, absolute and outright gift of the property?

A. He did not say it that way.

Q. What did he say to you?

A. Well, he told me that he had, for the purpose of transfer, a so-called contract for my sister-in-law, drafted, who then signed that contract. From then ^{on} ~~to~~ there I do not know. Those were Nazi ^{R. S.} ~~times~~ ¹⁹⁴⁴. It was very dangerous.

Q. Didn't Mr. Hall tell you that the only way that he would and could do this, was to make an absolute and outright gift to Mrs. Dwyer of all the property in the Stoneleigh Corporation?

A. Well, he did not say anything about "absolute", but he told me that it could only be done by way of a gift, and this was so-to-speak a gentlemen's agreement between the two men and myself.

Q. Mr. Schmieder, I show you three letters, defendant's Exhibits A, B, and C dated ^{marked} February 9, 1970, and ask you if ^{R. S.} ~~those~~ ^{part} those three letters each bear the signature of Jennie Bochmann?

A. Yes, they are signed by my sister-in-law.

Q. Have you ever seen these letters, Exhibits A, B and C before?

A. No response.

A H. G.
PRL

Q. Have you ever seen copies of them?

A. No.

Q. Did Mrs. Bochmann tell you that she had executed certain letters in connection with the transfer of property from herself to Mrs. Dwyer?

A. No. This all was done on instigation of Mr. Hall

Q. Then you're saying that Mrs. Bochmann never spoke to you about transferring this property to Mrs. Dwyer at all?

MR. REITER: For purposes of record I want to put on record that this is hearsay.

A. Well, yes, but I did not know the contents of the letters.

Q. Did you know the substance of the contents of the letters?

A. Well, that she had transferred the account from her name to the name of Mrs. Dwyer.

Q. Now, before Mrs. Bochmann transferred the property pursuant to defendant's Exhibits A, B and C marked here didn't you have a discussion with Mr. William Graupner in which he asked you to give him a writing and you gave him a writing which read: "Ich bin mit der Gesprochenin Regelung für meine Schwägerin einverstanden." and then you signed your name to that?

MR. REITER: Objection to that question because it presupposes that the witness knows that the transfer was made pursuant to these documents which he has denied knowledge of.

MR. OWEN: I will put the question in another form.

Q. At any time in or about the year 1937, '38 or '39 before this property was transferred from Stoneleigh to Mrs. Dwyer, did Mr. William Graupner speak with you and ask you to make him a memorandum in writing which you made for him which read as follows: "Ich bin mit der besprochenen Regelung für meine Schwägerin einverstanden."

MR. REITER: I object on the ground that it appears that you have the original document there. Wouldn't it be better to show it as best evidence to Mr. Schmieder?

MR. OWEN: Your objection is noted.

A. I remember now because we discussed this since yesterday. *K.S. JLD*

MR. REITER: I object on the ground that it is a double question and perhaps the question should be divided in half. First of all about the discussion and then about what was done.

Q. Mr. Schmieder, you remember this memorandum now, do you?

A. That was at Eversbach in Thuringia, in the home of
Mr. Graupner.

H.S.
KRS

Q. And you made and signed that memorandum there?

MR. REITER: I object on the ground
that the memorandum has
not been shown to the
witness yet.

A. Yes. But this was kept all very brief because of the Nazis.

MR. OWEN: Let the record show that the
witness was looking at the
memorandum which I will now
mark defendant's Exhibit D
for identification.

MR. REITER: I object to the way that
this was handled. In the
first place the memorandum
was not shown to the wit-
ness in the course of the
question which was given and
the answer was made and
thereafter there was a very
brief opportunity for the
witness to glance very quick-
ly over the shoulder of the
interpreter at a piece of
paper. Therefore, I would
indicate that we do not
concur in the statement of
defendant's counsel in this
respect.

MR. OWEN: Well, let me just note for the record that I think that your statement is somewhat unwarranted because you wanted to force me to show him the document when it was not the original in order to perhaps inform the witness that it was not in his handwriting. The fact of the matter is he has identified the language as having been put in the memorandum by him and that this document contains the substance of what he remembers putting in that memorandum. Whatever the record shows it shows.

Q. Now, Mr. Schmieder, after the transfer of the property from Stoneleigh to Mrs. Dwyer, do you remember having a meeting with Mr. Hall in which he said to you that Mrs. Bochmann would not execute a gift tax return and he wanted your help in having her execute it? Do you remember Mr. Hall coming to you after the property had been transferred to Mrs. Dwyer?

A. It was in Leipzig. This had already been transferred.

Q. And, did Mr. Hall say to you that Mrs. Bochmann would not sign a gift tax return?

A. Yes.

Q. And did Mr. Hall ask you for your assistance in getting the gift tax return signed?

A. Yes.

Q. And did you try to help him get the gift tax return signed by Mrs. Bochmann?

A. I was not allowed to do anything. It was dangerous.

Q. Did you speak to Mrs. Bochmann at all, even though it was
 1939, and ask her to sign the gift tax return?

A. Mr. Hall himself was at Lugano. However he was turned down.

Q. When you say "turned down", do you mean that Mrs. Bochmann
 did not sign the gift tax return for him?

A. Did not want to sign it, Right.

Q. Did Mr. Hall tell you this?

A. No, this was afterwards, Mr. Graupner told me that.

Q. When did he tell you this?

A. This had been in '39 - Then he certainly was back in Eversbach. *Q - H.S. Ad*

Q. Now, Mr. Schmieder, did you at any time have any conversation
 with Mrs. Helen B. Dwyer?

A. I do not know her at all.

Q. You never had any conversation with her?

A. No.

Q. Or, did any correspondence ^{take place} between the two of you?

A. No. *H.S. Ad*

Q. Now, concerning this transfer from Stoneleigh to Mrs. Dwyer,
 do you have any correspondence today between yourself and Mr. Hall
 regarding this subject?

A. No.

Q. Or, with Mr. William Graupner?

A. Correspondence was precluded.

Q. In other words, there wasn't any correspondence?

A. No.

Q. Just so I completely understand when you say "no", you

are correct there was no correspondence?

A. None took place.

Q. Mr. Schmieder, I show you a certificate of stock in the
 High Corporation which has been marked defendant's Exhibit E
 Identification, February 9, 1970, and ask you if you recognize
 Herman Graupner's signature at the foot of it?

A. Well, this is what Mr. Graupner wrote - this is "Jr."

MR. REITER: I requested before the answer
 went on record - to put an
 objection on record as I have
 in the past. I would think
 that it would be appropriate
 and I want to point out that
 these documents being shown
 to witness have not been shown
 to counsel for plaintiff prior
 thereto.

MR. OWEN: Your objection is noted.

Q. Mr. Schmieder, that's Graupner Jr.'s signature, is that correct?

A. Yes, I know this.

Q. Mr. Schmieder, I would assume that the father, William
 Graupner is no longer living?

A. He died back in '54.

Q. Now, is the son, Herman Graupner living?

A. Yes.

Q. And do you know where he lives?

A. In New York.

Q. Do you have an address for him?

A. 7 Gracie Square, New York 28 N.Y.

Q. And, he lives there today, to the best of your knowledge?

A. Yes, I believe that he still lives there. In 1967 he still lived there.

Q. Mr. Schmieder, during the second World War, were you in Germany?

A. Yes, unfortunately.

Q. And during the war did you have any contact, correspondence, or any other communication with Mrs. Dwyer, Mr. William Graupner, Mr. Louis Hall, Sr., or anyone else in America?

A. Nobody.

Q. Mr. Schmieder, in the summer of 1945, beginning with the end of hostilities in May, where were you living?

A. In Merane, Saxony.

Q. And that's in the Soviet Zone?

A. Yes.

*R. S.
K.S.*

Q. And did you conduct a business commencing with the end of the war?

A. The business was closed by the Nazis in 1942.

Q. Well, in the summer of 1945, were you at liberty and living at home in Merano in the Soviet Zone?

X H S,
per

A. Yes, until October.

Q. I understand that in October, or sometime in 1945, you were, because of some business infraction, the Soviets imprisoned you, is that correct?

A. Well, this related to America.

Q. When did this occur?

A. 6th, October

Q. 1945?

through

A. The G. F. U.

11/10/45
per

Q. Now, between May of 1945 and October of 1945, did you have any correspondence with Mr. William Graupner in America?

A. Nothing.

Q. Or with Mr. Louis Hall, Sr. in America?

A. No.

Q. Or, with Mrs. Dwyer?

A. No.

Q. Or with Mr. Louis Hall, Jr.?

A. No.

Q. Or Mr. Herman Graupner?

A. No.

Q. You did not speak with any of them nor have any correspondence with any of them?

A. Up until 1946 I was in jail -- February 1946.

Q. No, I am talking about the period May 1945 until October 1945?

A. There I was at liberty.

Q. And did you have any correspondence with these people I have spoken about?

A. No.

Q. Now, during the summer of 1945, did you learn from any source that the United States Government had seized assets which were listed in Mrs. Dwyer's name?

A. Not at that time but I thought that this would be.

Q. When did you first learn that this had happened?

A. Don't know exactly. For the first time I wrote it to Mr. Graupner, Sr. on February 21, 1947. It had been seven years and I hadn't heard from each other.

Q. Mr. Schmieder, I see that you have, or made reference to a letter to Mr. Graupner. In that letter do you refer to the property transferred to Mrs. Dwyer?

A. I was cautious. That was not even possible.

Q. So that subject is not mentioned in that letter?

A. I only wanted to find out what was going on at all.

Q. Mr. Schmieder, were you at liberty in 1947 when you wrote this letter to Mr. Graupner?

A. Then, by chance, I was at liberty.

MR. OWEN: The witness had been referring to a letter of 21 February 1947 to Mr. Graupner. "21st of February is the letter to Mr. Graupner" is the witness' answer and may it be marked defendant's Exhibit F for identification. Mr. Schmieder, I thank you for the offer of a copy.

Q. Now, at or about that time did you write any letter to Mr. Hall?

A. No.

Q. Did you write any letter to Mrs. Dwyer?

A. No.

Q. And was it at this time that you learned that property listed in Mrs. Dwyer's name had been seized by the United States Government during the war?

A. I still hadn't heard from Mr. Graupner.

Q. Did you hear from Mr. Hall?

A. No.

Q. Or from Mrs. Dwyer?

A. No.

Q. Now, Mr. Schmieder, what efforts did you make to find Mrs. Dwyer during the years 1945 to 1950?

A. Well, I was then apprehended by the German Bolsheviks in September, 1948.

Q. How long had you been free before September, 1948?

A. Well, from February, 1946. More than two years.

Q. Mr. Schmieder, I show you defendant's Exhibit G for identification and ask you if that document bears your signature?

MR. REITER: I again object on the ground that counsel for plaintiff has not had an opportunity to see it.

Q. Mr. Schmieder, this Doctor Alfred Lindner, is he in the nature of a Notary Public in the Soviet Zone of Germany? Alright, withdraw that question.

Q. Did you appear before a Dr. Alfred Lindner when you signed the defendant's Exhibit G?

A. Mr. Lindner was sent by Mr. Graupner to my office.

Q. Mr. Lindner witnessed your signature on defendant's Exhibit G, is that correct?

A. Yes, sir, yes, sir.

Q. Now, the language, Mr. Schmieder, "Eidesstattliche" has the word "Eide" in there which means that you were under oath when you made that document is that right?

MR. REITER: I object to this on the ground that first of all it pre-supposes that the word "Eide" means he is under oath, and it's a double edged question. First of all, what does "Eid" mean, and secondly, was he in fact placed under oath. I think the two questions should be asked separately, First of all what does "Eid" mean.

Q. Mr. Schmieder, the question No. 1, do you know what the word "Eide" means?

A. Yes, there are many oaths.

Q. Well, is this an oath to tell the truth?

A. Yes.

Q. That's the meaning of the word "Eide" here in defendant's Exhibit C? Well, I'll withdraw that question. Now, Mr. Schmieder, did Dr. Lindner come to your office with this piece of paper to be signed?

A. Yes.

Q. And, I believe you said you read it before you signed it?

A. Well, yes, of course I read it.

Q. And then Dr. Lindner took the paper and mailed it to

A. William Graupner?

A. Yes.

Q. What was the business you were running at the time that

Dr. Lindner came to you? Were you running a business?

A. Yes, very small.

Q. Now, turning again to defendant's Exhibit G, Mr. Schmieder, did you have any correspondence or conversations with Mrs. Dwyer concerning this exhibit?

A. No. I only thought that Mr. Graupner would need that or the litigation. *prosecution*

Q. What litigation? *prosecution*

A. The Dwyer ~~litigation~~. *prosecution*

Q. This is the ~~litigation~~ in the United States of America? *prosecution*

A. Yes.

Q. Did you see any of the papers that were in the lawsuit in America?

A. No, I didn't see any.

Q. Now, when Dr. Lindner came to you, and you executed defendant's Exhibit G, did he bring you any letter from Mr. William Graupner explaining why he wanted defendant's Exhibit G?

A. No. He only said he came by orders of Mr. Graupner.

Q. Mr. Schmieder, in between, I believe you said, February 1946 and some time late in 1948, you were not in imprisonment by the Soviets, is that correct?

A. No, No.

Q. And, what efforts did you make to find Mrs. Dwyer during this period?

A. I wrote it down here in this letter to ^{Mr.} Graupner, and when I was locked up in September 1948, my son travelled to Berlin or flew to Berlin, and he went to the real estate agent and he wrote Mr. Graupner that I was in prison.

Q. Now, did you during this time before you were imprisoned in 1948 by the Soviets, did you make any letters to Mrs. Dwyer?

A. Twice. I was locked up by the G.P.U. But in 1948 I was locked up by the Germans.

Q. I see, well before 1948 when you were locked up, did you try to write to Mrs. Dwyer?

A. No.

Q. These letters that you wrote to Mr. Graupner during this time, was Mr. Graupner in America when you wrote to him?

A. Yes.

Q. How long a period were you imprisoned beginning in 1948,

C. Schmieder?

A. Until September, 1950.

Q. And after September of 1950, did you write any letters to Mrs. Dwyer?

A. No.

Q. Did you try to telephone Mrs. Dwyer?

A. No.

Q. Did you try to reach Mr. Hall, Sr., or Mr. Hall, Jr.?

A. No.

Q. In the year 1950, did you write letters to Mr. William Graupner in America?

A. The real estate agent, she off and on wrote. However, during that time I was in jail.

Q. No, but this is after you were out of jail in 1950, did you write letters.

A. Mr. Graupner ^{wrote} ~~writes~~. However, this was in 1949 - on 27 July 1949, ^{there} ~~there~~, I was still in jail, that Mr. Hall would probably come to Germany. 11/18/49

Q. But after you got out of jail in 1950 did you write to Mr. William Graupner beginning in the year 1950?

A. My son wrote. However this is not material.

Q. Well, did you write.

A. I had a letter written. However, then I was already in West Germany.

Q. Now you say the first time you wrote Mr. Graupner, you were in West Germany?

A. Then I was in West Germany.

Q. In what year was that?

A. It was 1 March, 1953.

Q. And that's the first letter that you wrote to Mr. Graupner after some time in 1947 or 1948.

A. My son corresponded. However, this is not essential. I did not write. The real estate agent.

Q. Mr. Schmieder, I take it that you yourself did not write to Mr. Graupner between some time in 1948 and some time in 1953?

A. I did not write myself.

Q. No. In the letter in 1953, did you ask Mr. Graupner to try to locate Mrs. Dwyer for you?

A. Well, Mr. Graupner knew where Mrs. Dwyer was.

Q. Yes, but that doesn't answer my question. Did you ask him to find her?

A. Well, I wanted to know in what form a settlement had been effected.

MR. OWEN: May we mark this letter as defendant's Exhibit H for identification - the letter of March 1, 1953 from Mr. Schmieder to Mr. William Graupner to be marked as Exhibit H for identification. Oh, this letter is signed by the real estate agent.

A. It was on my behalf.

Q. Well, did you know that it was being written?

A. Yes. I was standing right next.

Q. I was "standing right next"?

A. Yes. In Berlin - yes.

Q. Mr. Schmieder, going through your correspondence file, did you write further to anyone in America concerning where Mrs. Dwyer was or where she could be found, or where Mr. Hall was and where he could be found?

A. Yes.

Q. Would you please identify for us the letters in which you wrote asking those questions?

A. There are very many to "Jr.".

MR. OWEN: It is stipulated by and between the parties that this tape shall be preserved.

(A luncheon recess was taken)

EXAMINATION RESUMED BY MR. OWEN:

Q. Mr. Schmieder, over the lunch hour it was agreed that you would endeavor to find in your correspondence where, in any letter to anyone starting with 1953 or 1954, when you came into the American Zone, that you wrote to anyone trying to locate the whereabouts of Mrs. Dwyer, or the whereabouts of Mr. Hall or Mr. Hall, Jr. Have you been able to find and identify the letters in which you have asked anyone those questions?

A. I was not able to find Mr. Hall anymore because he was dead.

Q. But did you find any letters to anyone in which you were trying to find Mrs. Dwyer or Mr. Hall, Jr.?

A. Well, Hall, Jr. that was little suitable, because Mr. Hall Jr. does not understand any German, and he always referred to Mr. Graupner, Jr.

Q. Yes, Mr. Schmieder, but what I'm asking is, did you write to anyone asking them, or trying to find the physical whereabouts of either Mr. Hall, Jr. or Mrs. Dwyer?

A. We have previously said: the letter of my realtor of 1 March and now here is the reply from Graupner.

Q. This is the reply of Graupner in 1953?

A. March, 1953.

RO: May we mark this for identification as defendant's next Exhibit.

(Off the record discussion)

MR. OWEN: May the record show that at my request Mr. Galleski had an "off-the-record" discussion with Mr. Schmieder, and Mr. Schmieder's answer to the question "Did he have such correspondence?" is "Later I wrote Mr. Graupner, Jr."

Q. Now, Mr. Schmieder, I ask you where is the letter to Mr. Graupner, Jr. that asks the whereabouts of Mrs. Dwyer or Mr. Hall, Jr.?

A. This is reply to my inquiry.

Q. Mr. Schmieder, I take it you do not happen to have in your correspondence file your inquiry itself?

A. Well, just that isn't there. However, this is shown by the letter here that I did ask.

Q. Who is Mrs. Hunkins?

A. Hunkins is the realtor from Franklin. She is now in the United States, in Chicago.

Q. Is the same woman as Annaliese Krause?

A. Yes. This is the reason why I don't have the letter. Hunkins wrote it. Graupner wrote me again. He maintained that he had not seen Dwyer since 1949. This I deem incorrect.

Q. Mr. Schmieder, your correspondence file shows that you wrote a letter to Mr. Graupner Jr. from Lomach on the 6th of March 1967, is that correct?

A. Even registered.

Q. And Mr. Graupner Jr. answered you by a letter of April 10, 1967, is that right?

A. Well, yes. Here on the 19th of April, this is his original letter.

MR. OWEN: May the two letters be marked Exhibits K and L, K being the letter of 6 March 1967, and L being Mr. Graupner's answer of April 1967.

Q. Mr. Schmieder can you tell me where in your letter to Mr. Graupner you asked the location or whereabouts of Mrs. Dwyer?

MR. REITER: Objection on the ground that there is not a proper foundation laid. There is no indication at the time this was marked that the question asks what it does. Perhaps the question should be whether it does or not?

MR. OWEN: I'll reframe the question.

Q. Mr. Schmieder, does your letter of March 6, 1967, defendant's Exhibit K, contain any question of Mr. Graupner as to where Mrs. Dwyer is located?

A. MR. GALLESKI, translating from a part in defendant's Exhibit K:

"In one of your prior letters you have claimed that you did not speak to Mrs. Dwyer or saw her since 1949. This is not correct because on the occasion of our meetings which place much later, you never adopt a word in that direction".

Q. Mr. Schmieder, are there any other letters now submitted to defendant's Exhibits L and K for identification in which you write to anyone inquiring of Mrs. Dwyer's or Mr. Louis Hall Jr.'s whereabouts?

A. Yes.

Q. And which letters, if they can be identified?

A. Since I never received any information from Mr. Graupner, in that respect, I obtained some information via a Swiss bank.

Q. And what information did you obtain from a Swiss bank?

A. ^{known} Swiss bank taking ~~cause~~, knowing what kind of securities Dwyer had, and there we wrote to four companies. Two of them gave evasive answers. One said it had to obtain the approval of Mrs. Dwyer first -wrote this here.

MR. OWEN: May this be marked the next defendant's Exhibit which is exhibit M for identification.

MR. REITER: I am also marking as Exhibit N, an answer of another bank, apparently in response to an inquiry of Mr. Schmieder's.

Q. Mr. Schmieder, do you have in your file here the letter which you wrote to these banks asking them for this information?

A. No, this is secret.

Q. No, I'm talking about the letter that you wrote to the bank?

A. I did not write to the bank at all myself.

Q. Who did?

A. The bank. I gave oral instructions. My bank wrote to

the other banks on my instructions.

Q. Mr. Schmieder, I understand that there are two final letters. One is a copy of your letter to ^{Mr.} Graupner dated April 22, 1967, and the other, his answer to you of November, 1967?

A. Yes, yes, that's possible.

MR. OWEN: May these letters be marked Exhibits O and P respectively.

Q. Mr. Schmieder, I asked you to look at Exhibit P for identification, the letter to you from Mr. Graupner of November, 1967. Do you recall receiving and reading that letter?

A. Yes, of course. Here it is!

Q. And do you remember looking at it and reading it at the time?

A. Yes.

Q. And did you in fact send a cable to Mrs. Dwyer's lawyer, Judge Sanborn, and receive an answer to your cable?

A. Yes. I wanted to come over there.

Q. And did Judge Sanborn give you an answer to your telegram?

A. Yes.

Q. And do you have your telegram and his answer?

MR. OWEN: Let's mark these two cables the next two exhibits. And may the record show that the witness has clarified that he cabled Mrs. Dwyer and received an answer from Mrs. Dwyer, the cables being marked defendant's exhibits Q and R respectively. For the record let's mark as exhibits an exchange of correspondence between the witness and Sanborn, being the witness' letter of November 16, 1967 and Frederick R. Sanborn's answer to the witness of December 13, 1967.

Q. Now, Mr. Schmieder, from 1954 until today, you have been living freely in the U. S. Zone in West Germany, have you not?

A. To date, yes.

Q. Since 1953 or 1954?

A. 1951.

Q. Mr. Schmieder, when did you first learn that Mrs. Dwyer had brought a lawsuit against the United States Government in connection with this property?

A. Well, I only became aware after Mr. Lindner had seen me.

Q. Incidentally, when Mr. Lindner saw you in 1948 and took away with him the Exhibit G that's been marked here, did you give him any letter to take back with him to Mr. Graepner in New York?

MR. REITER: Objection because there is no indication that Mr. Lindner was ever going to take that letter back.

MR. OWEN: I'll put the question again.

Q. Did you give Mr. Lindner any letter to be sent, forwarded, carried or anything else to Mr. Graupner?

A. No. That was too dangerous because the communists were there.

RO: I move to strike the balance of that answer as being unresponsive.

Q. Mr. Schmieder, in February 21, of 1947, when you wrote this letter to Mr. Graupner, you at that time were living, were you not, in the Russian Zone of Germany?

A. Yes.

Q. Did you feel any concern about the Communists when you wrote that letter?

A. But I can't tell you whether this letter hadn't been taken by someone into Berlin. This is quite possible. But all over, on the whole, this letter is kept neutral.

Q. Mr. Schmieder, when did you first learn that Mrs. Dwyer had made a settlement of her litigation with the United States Government?

A. This, I found out from Sommarich. Wait a minute, I can tell you. It was 1962.

Q. And, Mr. Schmieder, are you looking at a letter in 1962 that shows you the date that you learned of this?

A. 11 June, Sommarich.

RO: May that letter be marked for identification, please. A letter of Katz and Sommerich, 120 Broadway, New York 5, N.Y. dated June 11, 1962, addressed to Mr. Schmieder. The parties stipulate that from certain correspondence, specifically a letter from Katz and Sommerich dated September 1, 1964, to Mr. Kurt Schmieder, that on or about that date, Mr. Schmieder was advised and learned that the action of Mrs. Dwyer against the United States of America had been settled.

Q. Mr. Schmieder, when did you first retain Mr. Galleski as your attorney?

A. 14 February of 1968. No, no, no.

RO: The parties are prepared to stipulate from the correspondence in Mr. Schmieder's file that Mr. Galleski, after some months of consideration, was retained herein in or about November 1968.

Q. Mr. Schmieder, when you- after you retained Mr. Galleski, he prepared a complaint for you in the Federal Court in New York, did he not.

A. Yes.

Q. Did Mr. Galleski at any time before he used this complaint show it to you and did you read it?

A. Well, the complaint I saw. I don't know whether it had been filed or whether it hadn't been filed yet. But I did see it.

Q. And it being in English did you understand the language of it?

A. I do have a dictionary, and later on I also did ask him.

Q. And by him, you mean Mr. Galleski?

A. Yes. Mr. Galleski.

Q. Now, Mr. Schmieder, in this complaint it is stated at you relied upon counsel's opinion, and I take it that's Mr. Hall Sr., that the transfer in 1938 would be "impregnable at law" leaving a mere moral obligation on the part of Mrs. Dwyer to turn the property to you after the emergency. Now, was that the statement that Mr. Hall made to you at that time before this transfer was effected?

A. Well, we have discussed that whole thing already. Leipzig that this was to be a - how do you call it - a "gentlemen's agreement."

Q. Well, in answer to my question about the language in the complaint, Mr. Schuh, I believe he said "Richtig" did he not?

A. Well, yes. However what is being sued for this is counsel's, ~~not his~~. This is the reason why he does it. *V. G.*
first

Q. Mr. Schmieder, did Mr. Hall give you an opinion that the transfer would be "impregnable at law" being a mere moral obligation?

A. Well, yes. However, there was that agreement - you know, the gentlemen, they ~~have~~ complete trust in me, and I did have complete trust in them. *had the*
first

Q. Now, Mr. Schmieder, this agreement between gentlemen was not made with you by Mrs. Dwyer, was it?

A. No, I never had anything to do with Mrs. Dwyer. It was Mr. Graupner and Mr. Hall who were the executors and it was Mr. Hall who determined that.

Q. So the answer to my question is you did not have any agreement with Mrs. Dwyer?

MR. REITER: Objection to that question due to the fact that the witness had answered the question in his own words and you are now asking for him to render a conclusion based upon what he had said in his own terminology, and it seems clear that whatever the agreement was with Mrs. Dwyer must have been through Mr. Graupner and Mr. Hall - He didn't say specifically - he said only that he did not ever meet or know Mrs. Dwyer and everything was done through Mr. Graupner and Mr. Hall.

RO: As long as it is understood that he never spoke to Mrs. Dwyer, never wrote to Mrs. Dwyer, and that Mrs. Dwyer never spoke or wrote to him, then I will withdraw that question. So understood between counsel? Well, I'm talking now about the years 1935, 6, 7, 8, 9 and 40 - that's clear. Counsel says "no question about it."

Q. Now, Mr. Schmieder going to paragraph 9 of the complaint, it reads that in 1948 -- Mr. Schmieder, I take it that the facts in that paragraph, you read them and they are true?

A. Well, I have read it.

Q. Then it is true?

A. Well, defendant never made an appearance with me. It was always Mr. Graupner and his executing organ, Mr. Hall

MR. OWEN: That's all the questions I have.

CROSS EXAMINATION BY MR. REITER:

Q. Mr. Schmieder, when did you first meet Mr. Graupner, Sr.?

A. 1908. He already asked that.

Q. What was the occasion of your meeting with Mr. Graupner for the first time?

A. He belonged to a firm of sales agents and he was the liason man to Garfield, Worsted Mills, Wartman and Huffman.

Q. And, how did you happen to meet him.

A. In the mills. In the factory.

Q. Were you at the time in the United States?

A. Yes, yes, 1908.

Q. What were you doing here at that time?

A. Well, I practiced in that firm where my father was a partner.

Q. Thereafter, how regularly did you see Mr. Graupner, Sr.?

A. Well, he came almost every morning to the firm in order to exchange himself as to the manufacture. However, I did not always see him then.

Q. About how often would you say you saw him over the next twenty-five years?

A. Well, there is a great difference. As long as I was in the United States I saw him frequently. However, in 1909, I then got into the sales office on Broadway.

Q. And after you returned to Germany did you continue to see him?

A. Not right away because then World War I started.

Q. How about after the end of World War I?

A. During the inflation Mr. Graupner was not in Germany, he then came later.

Q. How regularly or often did he come?

A. He later built himself a house in Eversbach, because his wife ^{originated} hails from someplace there. *K.G. per*

Q. After that did you see him regularly?

A. Almost every year.

Q. Did there come a time when you and Mr. Graupner first discussed the matter of your assets in the United States.

A. Yes.

MR. OWEN: May the record show I take objection to this line of inquiry as being irrelevant but I don't object to the recording of the answers.

Q. Will you explain the circumstances of this discussion and when it occurred?

A. Yes. About '28 was the release, and there Mr. Graupner purchased for myself in New York for about \$250,000.00, securities.

Q. When did the first discussion of protecting your securities from the Nazis arise?

A. Well, first came the foreign exchange release. And *crisis* *H.F.*
then in 1932, we knew about what was going to happen in Germany. *and*

Q. At that time did you have any discussions with Mr. Graupner?

A. Yes.

Q. Did Mr. Graupner make any recommendations to you as to your assets in the United States?

A. Well, the securities had been mainly purchased. Well, only based on the apprehension from the exchange policy and also from the Nazi economy which later came about, I split up the account at the New York Trust Company.

Q. What did Mr. Graupner recommend be done with these accounts?

A. Two accounts. An official one, that was roughly, well, I would say a good third, and then an account. Well, we call it "hot money".

Q. And what did Mr. Graupner suggest that you do with it?

A. I, as such, suggested this to Mr. Graupner, that the so-called latent account was to be carried under the name of my sister-in-law.

Q. And the other account?

A. That was taxed officially in New York and also here in Germany.

Q. What was the difference insofar as taxation and registration between the two accounts?

A. Well, for the account that was hidden, taxes were paid for it in America. Mr. Graupner supervised that. And besides even the bank could have done it. This I do not know.

Q. The other account?

A. My account that was known here in Germany, well, taxes were paid in the States. However, the taxes were offset - you know whatever taxes I paid to the States, the amount was offset from what I paid over here, and then I paid taxes again over here in Germany.

Q. Who arranged for the setting up of the procedure for the transfer of the account not known in Germany whereby Mrs. Bochmann became the title owner, or the owner of the stock in the new corporation?

A. Exactly I could not tell you. However, they selected a number of assets and it was determined that these should be transferred over to the account of Jennie Bochmann.

Q. Did there come a time when the Stoneleigh corporation was set up?

A. Yes.

Q. Whose idea was this?

Mr. Owen: Object to the form of the question.

A. That was Graupner's idea.

Q. Do you know who set up the Stoneleigh Corporation?

A. Well that was done by Mr. Hall on the orders of Mr. Graupner.

Q. How did you come in contact with Mr. Hall.

A. Through Mr. Graupner.

Q. Who was Mr. Hall?

A. Well, he was a lawyer.

Q. Where were his offices?

A. In New York.

It will be stipulated to Mr. Hall's firm and address.

Q. After Stoneleigh Corporation was set up, what was done with the ownership of Stoneleigh Corporation?

A. This account Bochmann went over into Stoneleigh Corporation.

Q. Who owned the stock in Stoneleigh Corporation?

A. They were issued to Mrs. Bochmann.

Q. Do I understand that the securities were transferred then from Mrs. Bochmann to Stoneleigh Corporation?

A. - Were transferred.

Q. Did there come a time when the stock in Stoneleigh Corporation was transferred from Mrs. Bochmann to someone else?

A. Yes, later.

Q. Will you explain the circumstances?

A. Mrs. Bochmann wanted - this I've already told you - she wanted to get out of this business, since she had American

securities of her own and she didn't want to get into difficulties with her Swiss Government.

Q. What possibilities did you consider at that time as to what to do?

MR OWEN: Objection to the form of the question.

A. There were many possibilities.

Q. Will you explain what they were?

A. First, one could take the assets to Switzerland, but that was hazardous because Switzerland could have been overrun by the Nazis.

Q. What other possibilities were there at that time?

A. I was asked by the German Reichsbank to turn in my official account at 2.50 D.M. a dollar. This I successfully turned down until the end of the war. I could, if needed, ~~been~~ sold all the money to the Nazis and perhaps even attained a higher price for the dollars because it was needed foreign exchange, but I desisted because I was an anti-Nazi, and I didn't want to give my money that arms could be purchased.

Q. At this time could you have travelled to Switzerland or some other neutral country?

A. Yes.

Q. Was there a possibility of your depositing the funds in some other country?

A. Yes, insofar as they were not too closely located to Germany.

Q. Were there such other countries?

MR. OWEN: Object to the speculativeness of this question.

A. Portugal and then the Scandinavian countries.

Q. Did you discuss this problem with Mr. Graupner at the time?

A. Yes. Well, and there we also agreed, because the dollar as such was the hardest ~~terms~~ ^{currency} yet to ~~pay~~ ^{find}, to leave it as it was.

Q. Did you arrange through Mr. Graupner to transfer the Stoneleigh interests to someone else?

A. Yes.

Q. Explain what he recommended?

A. Well, he recommended - this I've already said - that he submit this idea to Mr. Hall and Mr. Hall would find a person who was willing to have the interests transferred from Mrs. Bochmann to herself.

Q. Did Mr. Hall make such a selection?

A. Yes.

Q. Who did he select?

A. Mrs. Dwyer.

Q. Do you know who Mrs. Dwyer was?

A. Mr. Graupner merely intimated that this must have been a secretary or employee of Mr. Hall's.

Q. Did Mr. Graupner say anything of a more personal nature as to the relationship between Mr. Hall and Mrs. Dwyer?

A. No. But, he certainly must have trusted her.

Q. The transfer of the Stoneleigh stock to Mrs. Dwyer completed?

A. Yes.

Q. Was this done on your instructions to Mrs. Bochmann?

A. Yes. Mr. Graupner discussed the matter with me, and Mr. Hall then elaborated and worked up the respective letters.

Q. Did there come a time after that that Mr. Hall came to Germany?

A. Well, in 1938, this was the only time I discussed with him what Mr. Graupner had ordered.

Q. Do you know why Mrs. Bochmann refused to sign the gift tax return for Mr. Hall?

MR. OWEN: I object to the question as having no foundation and no showing that he knows that she refused to do it - just that she didn't do it.

Q. Do you know why Mrs. Bochmann did not sign the gift tax return for Mr. Hall?

A. I do assume she said to herself she had nothing to give away.

Q. What was the last time you saw Mr. Graupner?

A. 1940 at Leipzig - very briefly. Things were high with the Americans at that time and he departed via Italy.

Q. At the time you spoke with Mr. Hall that you referred to, what if any arrangement was discussed with Mr. Hall in regard to your property in the United States?

A. Yes, that Mr. Graupner had ~~been in agreement upon~~,
was made. *agreement which*

Q. Did you discuss this in detail with Mr. Hall in 1938?

A. Well, he so-to-speak, knew all that already from Mr. Graupner - we only discussed it once more.

Q. Did you discuss with Mr. Hall what you wanted done with your property?

A. Well, that was clear, so-to-speak - transferred it to Dwyer.

Q. Did you advise Mr. Hall what you wanted done with the property in the event that you died?

A. I had mainly discussed that with Mr. Graupner and he had made notes. Well, and it was like this: that should I live, that then on proper occasion, it would be returned to me. However, if I died, that then my son and my daughter would receive an equal share.

Q. During your conference with Mr. Hall in 1938, was this subject discussed?

A. That point was touched on.

Q. Did he indicate to you that he understood what you wanted done?

MR. OWEN: Object to that question.

A. Oh, yes both understood that. Graupner and also Hall.

Q. With whom did you have all your communications regarding your property in the United States after the transfer of the property from Mrs. Bochmann?

MR. OWEN: Object to the breadth of that question.

Q. Did you have any agreement with Mr. Hall as to how your communications with him would be handled?

MR. OWEN: Object to the form of that question.

A. Communications were mainly in the hands of Mr. Graupner. Mr. Hall was *the principal* for the legal part of course.

Q. With whom did you have your communications, Mr. Graupner or Mr. Hall, during the period when these arrangements were being made to make the transfers?

A. Mr. Hall I talked to only once. The rest of the things I received in writing or orally from Mr. Graupner.

Q. During World War II did you have any communication with anyone with respect to this property?

A. For seven years not.

Q. What was the first time when you could again communicate with Mr. Graupner?

MR. OWEN: Object to this question.

A. Well -- 1947.

Q. When you were again able to communicate with the United States, with whom did you carry on your communications in the United States regarding your property?

A. Yes, that was at first very difficult because Mr. Graupner let me know through Mrs. Krause in 1949, that he did not wish any direct communication with me because he had to act as a witness in that litigation. This retarded the entire process of the matter.

Q. When you met Mr. Hall in 1938, did he instruct you to carry on communications with him through Mr. Graupner?

yes A. ¹⁹³⁸ I had always been in touch through Mr. Graupner with Mr. Hall. He himself then wrote in '49. *R.G. pres*

Q. Did Mr. Hall, himself, in 1948, ask that you deal strictly through Mr. Graupner? *1938- R.G. pres*

A. Yes, that was always the case.

Q. Were you able to communicate with Mr. Graupner at any time after World War II was over?

MR. OWEN: I object to this question in the strongest terms. *1/10 R.G. pres*

a fine Q. Did there come after World War II when you again took up communication with Mr. Graupner?

A. Yes through Mrs. Krause in 1953.

MR. OWEN: The question is again being put to the witness.

A. Well, directly as I already told you, I was not allowed to communicate with him because of his status as a witness. He merely wrote in 1949 to Mrs. Krause that he could not directly communicate with me. He explained, him being a witness, he could not reply directly to me. However, we should

4/10/70
rély in this matter about Mr. Hall - he would do his best.

Was 1949.

Q. When you were first able to get in touch with Mr. Graupner?

MR. OWEN: That's what I objected to before and you changed the form.

Q. Did you first address a letter to Mr. Graupner in 1947?

A. Yes, sir, this we have already said.

Q. Could you have written a letter to Mr. Graupner after World War II, before 1947?

MR. OWEN: Object to the form of the question.

A. That was hardly possible.

Q. What was the difficulty in writing such a letter?

MR. OWEN: Object to the form of this question.

A. The fear of all the people.

Q. You were at that time in the Russian Zone?

A. Yes.

Q. Was there censorship in the Russian Zone at that time?

A. Surely. They had their people.

Q. Why did you lose your business in Germany during the War?

A. Well, because I was not a Nazi.

MR. OWEN: Object to the question on the ground of irrelevancy.

Q. Why were you imprisoned in Germany after the War?

MR. OWEN: Same objection.

A. I was suspected of being pro American.

Q. Referring to the statement you signed at the request of Dr. Lindner, defendant's Exhibit G for identification, was an oath given to you at the time you signed that?

A. Well, I received that written request. He did not specifically advise me. But, of course, I know that this was signed in lieu of an oath.

Q. Did Dr. Lindner or anyone else administer an oath to you at the time you executed that paper?

A. Myself? No.

Q. Do you know whether Dr. Lindner is a "Notar" or lawyer?

A. No, he is not.

Q. Now, to Defendant's Exhibit F, dated February 21, 1947, and specifically paragraph 5, what was the meaning of this language regarding "Sturm."

A. I was a big Volksturm man ^{under} from Himmler.

Q. Why did you use that term in this letter?

MR. OWEN: Objection.

A. Well, I just wanted to tell Mr. Graupner that in 1957, I still had been compelled by the Nazis to become a member of the Volksturm.

Redirect examination by Mr. Owen:

Q. Mr. Schmieder just two or three questions more. When did you first start writing letters to the United States of America at the end of World War II? (Pause.) In other words your referring to your correspondence file?

A. I can only refer to the correspondence.

Q. This shows for example a letter to Washington on the 5th of December 1946, is that right?

A. Oh, well, this is to Mr. Ward, I wrote to him. However, that is - I did not receive any reply.

Q. Now the next letter that you wrote to the United States was in February of 1947?

A. Yes.

Q. And then you wrote Mr. Graupner another letter on July of 1947, and you wrote Mr. Graupner another letter on the 30th of April 1948. I'm correct in that am I not?

A. Yes, there I had been at Frau Krause's.

Q. Now, Mr. Schmieder, do you have the letter to you from Mr. Graupner in which he told you that he did not want you to correspond directly with him in the future because he was involved in this lawsuit?

A. This is by extract from Mrs. Krause.

Q. This is a letter of February 15, 1949. Quoting from the letter, "The case still remains in contest."

A. Dwyer's counsel insists that the gift had been made absolute and without reservation, otherwise ^{he} did not want to litigate.

Q. And, Mr. Schmieder, this is an extract from a letter from Mr. William Graupner to Mrs. Krause, and Mrs. Krause sent the extract of that letter to you?

A. For me, yes. Here is another letter, 26 February, "My friend Hall is doing his best! One could already write him, however it is better if everything is desisted from and ~~is~~ is trusted." *MS. per*

Q. Now, just so I have it in one coherent form, Mr. Schmieder, when you met with Mr. Hall in Leipzig in 1938, what did you say to Mr. Hall and what did Mr. Hall say to you on the subject of this transfer of this property?

A. I have previously discussed this with Mr. Graupner thoroughly - and the result was that Mrs. Dwyer had the properties transferrred and I did ask him whether he is in agreement with what I have discussed with Mr. Graupner. And then he said, "yes," because I have named you a trustworthy individual. With that, touched on the point of succession, in case of an inheritance - this we discussed - this I still *MS. per*
now.

Q. And was there anything else?

A. We perhaps talked for half an hour. It may be somewhat more. Insofar it was simple since the outlines have already been established. *MS. per*

MR. REITER: You also discussed the carrying on of communications with you and Mr. Graupner as I recall?

it was agreed with Mr. Hall

69a

A. Yes. Well, I ~~may well~~ presume that Mr. Graupner always showed the correspondence to Mr. ~~Hall~~ ^{Hall}.

*H. G.
1949*

MR. OWEN: We are now marking plaintiff's Exhibit 1 for identification, which is a letter to Rolf Schmieder from William Graupner, dated December 14, 1949; plaintiff's Exhibit 2 for identification, being a letter from William Graupner to Annaliese Krause, dated July 27, 1949; and plaintiff's Exhibit 3, being a letter from William Graupner to one Frau Lindner dated April 14, 1949, and it is stipulated by counsel for defendant that for the purposes of any motions that may be made here prior to trial the defendant is prepared to stipulate to the authenticity of the balance of Mr. Schmieder's correspondence files. Without, however, this stipulation in any way being a stipulation that the documents are deemed authentic or in any other way identified, ~~and that~~, for any other purposes connected with the trial itself. As to plaintiff's Exhibits 1, 2 and 3 for identification marked and dated this day - those are deemed authentic and usable for all purposes.

Rolf Schmieder

Confederation of Switzerland
Canton and City of Zurich
Consulate General of the
United States of America

Subscribed and sworn to by
KURT SCHMIEDER

George R. Springer
before me, a ~~Vice~~ ^{Consul} Consul of the
United States of America in and for the
consular District of Zurich, Switzerland,
 duly commissioned and qualified.

on 7th day of JULY, 1970 A.D.

George R. Springer
Consul General

DEPOSITION OF KURT SCHMIEDER ON SEPTEMBER 5, 1973 and
SEPTEMBER 6, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KURT SCHMIEDER

Plaintiff

v.

LOUIS H. HALL, JR., as
Preliminary Executor of the
Estate of HELEN B. DWYER

Defendant

DEPOSITION

of

KURT SCHMIEDER

Number 69 Civil 1939

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Examination before trial of Plaintiff KURT SCHMIEDER, taken
in L rrach, Germany, Wednesday, 5 September 1973, and Thursday,
6 September 1973, pursuant to order and stipulation between the
parties.

Paul Ellenbogen
Official Shorthand Reporter

APPEARANCES:

Attorneys for the Plaintiff:

WERNER GALLESKI, Esq.

ROBERT REITER, Esq.

RICHARD L. MEDVERD, Esq.

Attorney for the Defendant:

RICHARD OWEN, Esq.

Witness: KURT SCHMIEDER

Interpreter: MRS. HELEN TOEPFER

Reporter: Mr. Paul Ellenbogen

(The proceeding opened at 10:30, Wednesday, 5 September 1972.)

MR REITER: This is the deposition of Kurt Schmieder taken in the case of Schmieder v. Hall, Number 69 Civil 1988, in the United States District Court for the Southern District of New York.

By stipulation between the parties, the witness is to be sworn today by Richard Owen and Werner Galleski, both of whom are Notaries Public for the County of New York, State of New York.

This is, by stipulation, to be considered a valid oath and any objections to the validity of the oath or the manner to the taking of the deposition today are stipulated to be waived.

Upon completion of the deposition, the witness is to sign and swear to the deposition before an American Consular Official.

Is that correct?

MR OWEN: Agreed.

Let's swear in the reporter and interpreter at this time.

(The reporter, Mr. Paul Ellenbogen, was sworn by both Mr. Richard Owen and Mr. Werner Galleski.)

(The interpreter, Mrs. Helen Toepfer, was sworn by both Mr. Richard Owen and Mr. Werner Gallecki.)

MR REITER: There is one other preliminary matter I should bring up, and that is that Mr. Schmieder is of advanced age and not in too good health; and we may, in the course of the deposition, be required to ask for a recess from time to time so he can do some recuperating.

May the witness be sworn.

K U R T S C H M I E D E R

having been called as a witness for and on behalf of the Plaintiff, and having been first duly sworn through the interpreter by Mr. Richard Owen, was examined and testified (except as otherwise noted) through the interpreter as follows:

MR GALLECKI: Before the witness testifies, I would like to note that Mr. Owen and I are acting jointly in giving the witness the oath.

I hereby accept that the oath taken or given by Mr. Owen as a Notary is to be deemed to have been administered on my behalf jointly.

DIRECT EXAMINATION

BY MR REITER:

Q. Mr. Schmieder, will you please give us your full name?

A. My full name is Kurt Schmieder.

Q. Mr. Schmieder, what is your address?

A. Lörrach, Germany, Hang Strasse 15.

Q. Are you the Plaintiff in the case of *Schmieder v. Hall*, 69 Civil 1939, in the United States District Court for the Southern District of New York?

A. Yes.

MR OWEN: I'll stipulate to this.

MR REITER: It is stipulated that he is. We will accept the stipulation.

Q. Mr. Schmieder, how old are you?

A. 85 years old.

Q. What is the present condition of your health?

A. I am an old man and sometimes things turn a little, but my brain is still okay, and I know what is going on.

Q. Have you any medical disability now?

A. I don't know.

Q. Are you suffering from any illnesses at the present time?

A. No, not at the present time. But, of course, it may happen that in a matter of hours I will reach a point where I am tired.

Q. Are you under the care of a physician?

A. Yes.

Q. What is his name?

A. Helmut Kleye.

Q. For what is Doctor Kleye treating you?

A. He is my general practitioner, and he sometimes gives me the address of specialists.

Q. Are you under any care or treatment for any kind of circulatory problem at this time?

A. I do have a few pills I am taking now -- a small one for my heart, and a bigger one for circulatory trouble.

Q. Mr. Schmieder, do you consider yourself able at this time to come to the United States if a trial were to be held there?

MR OWEN: I would like to note an objection on the record.

A. I would love to see the States again, but my physicians are against it. They warned me first because of my circulatory disease. And they say that any trip overseas would be bad for me -- first of all the flight; and, secondly, New York City is not a very restful place.

Q. Did there come a time when you acquired property in the United States?

A. Yes.

Q. When was that?

A. My father and my uncle and a third person set up a

spinnery in approximately ... in the 1900's, in a place called Passaic, near New York City.

MR MEDVERD: That should be a textile mill.

MR OWEN: I think that's okay.

Q. Did there come a time when you acquired an interest in this business?

A. Yes, a small personal one; however, I inherited my father's share.

Q. What, if anything, happened to this business during World War I?

A. The shares of the Germans were confiscated.

Q. Do you know what happened to this business after the confiscation?

A. The State took over our shares at some given value, but I do not remember exactly the kind of transfer.

Q. Did there come a time when you received any compensation for this taking of your interest in the business?

A. Yes.

Q. Will you tell us what happened in that respect?

A. We had a representative called Johnson, who took care of getting compensation for our assets there.

Q. Did you actually receive compensation?

A. Yes, in 1928.

Q. What was the form of the compensation?

A. In dollars. The compensation was in dollars.

Q. Now did there come a time when you met one William Graupner?

A. Yes.

Q. Will you tell us the circumstances?

A. In 1908, I was working in this textile mill in Passaic as the son of one of the co-owners. Ever since, I have known Mr. William Graupner. In a manner of speaking, he had slowly become a fatherly friend to me.

Q. Mr. Schmieder, how old were you at the time you first met him?

A. 20.

Q. How did you happen to meet Mr. Graupner?

A. Mr. Graupner was a member of the New York salesmen corporation, and the name of this corporation was Graupner, Love and McCabe. And it was located on Broadway. But Mr. Graupner lived in Passaic with his family. He used to work mornings in the Garfield Mills, and in the afternoon he was in the office on Broadway.

Q. How often did you have occasion to see Mr. Graupner while you were in the United States?

A. Well, I used to see him mornings in the mill. And, in the afternoons, I would get excerpts that he made for me about outstanding supplies. And I was to check up on where

the goods had gotten stuck before getting to the customer.

Q. Did you have occasion at that time to see Mr. Graupner socially outside the business?

A. Yes. I had occasion to meet him socially at his family's place on Sundays, or for lunch. The occasion presented itself often.

Q. When did you return to Germany?

A. In 1909.

Q. Thereafter, Mr. Schmieder, did you have occasion to meet Mr. Graupner?

A. Yes, time and again. He had a house that he had built in Ebersdorf/Thuringia.

Q. On what occasions did you see him in Europe?

A. I visited him in Ebersdorf and he came to see us in Meerane, in Saxony.

Q. Where were you living at that time?

A. We lived in Meerane -- always in Germany and always in Meerane, which is in Saxony.

Q. Have you ever had occasion to know a Mr. Louis H. Hall, Sr.?

A. Yes.

Q. When was the first time you heard of Mr. Louis H. Hall, Sr.,?

A. In 1928.

Q. What was the occasion?

A. Mr. Hall then lived in a Leipzig Hotel. And Mr. Graupner wanted to introduce me to him.

Q. Had you ever heard of Mr. Hall through Mr. Graupner previously?

A. It was about this time, namely in 1928, that he drew my attention to Mr. Hall.

MR OWEN: Incidentally, I assume for the record that objections -- except as to form -- are reserved for the trial, so that I don't need to place an objection to what I consider to be a hearsay statement.

MR REITER: Agreed.

Q. Did you have any attorney to handle your World War I property claim?

A. Yes. It was a Mr. Johnson

Q. Had you considered hiring any other attorney to represent you in that connection?

MR OWEN: This one I object to on the record.

A. No. Actually not. But Mr. Johnson had a representative in Washington -- a Mr. Ward.

Q. Did Mr. Graupner on any occasion suggest any other attorney to you?

A. Well, actually he did want us to have this Mr. Hall, Sr., for the whole family -- my uncle, my father. But it was

too late at that point. We already had Mr. Johnson.

Q. Will you give us the approximate date when this suggestion occurred, if you remember?

A. That was about 1920. Mr. Graupner was then with us and in...

I am sorry.

He was visiting. And we were with the Stoshr Company, which was a big textile corporation. And they had an interest in the Botany Mills in Passaic.

Q. After the property was returned to you in 1928, what did you do with it?

A. The money was transferred to the New York Trust Company. And Mr. Graupner bought American shares for me.

Q. Did there come a time when all -- or any part of the account and the property therein -- was transferred out of your name?

MR OWEN: I object to the form of the question.

MR REITER: Let me restate the question.

Q. Did there come a time when any of the account was transferred by you?

A. Yes.

Q. Will you tell us what happened?

A. Now, when the Nazis took over in Germany, it became quite dangerous because I used to pay taxes on only

part of my money in Germany. So I agreed with Mr. Graupner to have two-thirds of this account transferred to my sister-in-law, Mrs. Jenny Bochmann.

MR OWEN: Excuse me.

There was the expression used, "hot money."

INTERPRETER: Yes.

MR OWEN: That fits in there somewhere.

INTERPRETER: Yes.

A. (continued) This was a kind of hot money account for me. The one-third -- or the remaining third -- was completely legal. We paid taxes on it both in Germany and in the United States. And the remainder -- the two-thirds -- was, I am sure, taken care of by the bank, which paid the taxes that had to be paid in the States.

Q. Into what name was the portion that you indicated to have been transferred placed?

A. The two-thirds were put in the name of Mrs. Jenny Bochmann, in Lugano.

Q. Was anything done or said at that time about giving Mrs. Bochmann any ownership interest in this account?

MR OWEN: I object to the form of that question.

MR REITER: Let me see if I can correct that. ~~Strike~~ the question.

Q. Did you say or do anything -- in connection with the

transfer of the account -- to indicate that any ownership interest in the account was being given to Jenny Bochmann?

MR OWEN: I repeat my objection to the form.

A. The account was only put in the name of Mrs. Jenny Bochmann, but the actual owner was I, myself.

MR OWEN: I don't think the answer is a responsive answer, and I move to strike it.

Q. Did you take any action, or say anything to anyone, indicating that you were not the actual owner of the account after this transfer, or at the time of the transfer?

MR OWEN: Object to the form.

MR REITER: (To Interpreter) Ask the question.

(The interpreter spoke to the witness.)

MR REITER: Strike the question. Let me ask it again. I believe it is too complicated.

Q. At the time of the transfer of the account to Jenny Bochmann's name, did you do anything or say anything to indicate that she was to receive any ownership interest in the account?

MR OWEN: I again object to the form of the question.

A. No. My sister-in-law knew that she was not the owner, but that I was the owner.

MR OWEN: I move to strike the answer as

unresponsive. There is no foundation laid for it.

Q. At the time of this transfer, did you communicate with Mrs. Bochmann regarding it?

A. Yes.

Q. Is Mrs. Bochmann a relative or a relative-by-marriage of yours?

A. Mrs. Bochmann is the sister of my wife.

Q. Did you have occasion to say anything to Mrs. Bochmann about the ownership interest in this account?

A. What do you suppose me to have told her?

MR OWEN: What was that answer?

INTERPRETER: "What do you suppose me to have told her?"

Q. What was the understanding -- if any was reached -- as to the ownership of the account?

MR OWEN: I object to that in both form and substance.

A. Well, she just lent me her name for this account and that was all. The share interest was transferred to the account and they were never gotten out of the account.

Q. Did you have any intention at that time to give Mrs. Bochmann any ownership interest in that account?

MR OWEN: I object to that.

A. No.

Q. What benefit did you and Mr. Graupner believe could be accomplished by transferring the account to her name?

MR OWEN: I object to that on both form and substance.

MR REITER: Strike that and let me try again.

Q. What was yours and Mr. Graupner's purpose in the transfer of the account to Mrs. Boehmann?

MR OWEN: Same objection.

A. We were afraid that the Nazis might discover this account when it was under my name.

Q. On whose advice -- if that of anyone -- did you make this transfer?

MR OWEN: Same objection.

MR REITER: Let me ask it again.

Q. Did anyone advise you to make this transfer?

MR OWEN: Same objection.

MR REITER: Strike that.

Q. Did you receive any advice in connection with the transfer of the account to Mrs. Boehmann?

MR OWEN: Same objection.

A. Not really. I discussed the question with Mr. Graupner -- namely, the transfer of two-thirds of the account -- and I do not remember the exact time.

Q. Did Mr. Graupner give you any advice at the time?

MR OWEN: Same objection.

A. No. I don't know what kind of advice I should have received.

Q. What if anything did he say regarding the transfer to Jenny Bochmann?

A. Well, he took notice of it because we had discussed it together -- we had so discussed it, to that effect.

Q. Whose idea was it to make the transfer to Jenny Bochmann?

A. Mrs. Bochmann was a Swiss Citizen and, therefore, we wanted to unburden my account by transferring two-thirds to her name. It was, so to speak, baptized in her name -- christened in her name.

Q. Mr. Schmieder, who originally came up with the idea of doing this?

A. Actually, it was my idea.

Q. Thereafter, did there come a time when the account in Mrs. Bochmann's name was transferred out of her name?

A. Yes.

Q. Would you tell us the circumstances?

MR OWEN: (To Interpreter) This is critical, so would you please translate sentence for sentence as we go along.

INTERPRETER: Yes.

A. Mrs. Bochmann did not want to be burdened with this account any more because she, herself, owned American securities too which were in Switzerland. And she wanted to be rid of having her name on my account. Then I discussed this problem with Mr. Graupner: What are we going to do? He, in turn, discussed it with Mr. Hall, Sr. Then, after some time, Mr. Graupner told me -- during a visit to Ebersdorf -- that Mr. Hall had a secretary to whom the account could be given because that was the only way of doing it.

Q. Prior to that...

MR OWEN: Before you put the next question, let me note an objection to the hearsay in the answer which I, of course, feel I am not bound by.

MR REITER: Let me strike this and start it again. Strike the whole question and answer.

MR OWEN: The last one?

MR REITER: Yes -- to see if I can avoid your objection.

Q. Did there come a time when a Stoneleigh Corporation was organized to your knowledge?

A. Yes.

Q. What were the circumstances, if you know, of the setting up of Stoneleigh Corporation?

A. As far as I remember, the name of Mrs. Bochmann was

entered on the shares as owner of the corporation.

Q. Who set up Stoneleigh Corporation, if you know?

A. It was Mr. Hall, Sr., who had come to an agreement with Mr. Graupner, and this is how the corporation was set up.

MR OWEN: May I note my objection to the form of the answer.

Q. Did you employ an attorney to set up Stoneleigh Corporation?

A. I do not know that because Mr. Hall took charge of it -- upon the order, or upon the instructions, of Mr. Graupner. And I don't know whether he also called in someone else.

Q. Whom did you instruct regarding the establishment of Stoneleigh Corporation, if anyone?

A. It was done in agreement with Mr. Graupner and Mr. Hall.

MR OWEN: Move to strike the answer as unresponsive.

Q. Did you yourself give instructions regarding the setting up of this corporation?

A. Yes. I did via Mr. Graupner and Mr. Hall.

MR REITER: I'll ask the question again.

Q. Did you yourself give instructions regarding the establishment of Stoneleigh Corporation?

MR OWEN: At this point, it only calls for a yes or

no answer, I take it.

MR REITER: That's right -- yes or no.

A. Yes.

Q. What were these instructions and to whom were they given?

A. As I said before, I have discussed it with Mr. Graupner. And Mr. Graupner -- after having discussed it in turn with Mr. Hall -- gave him, Mr. Hall, the necessary instructions.

Q. Do you know where Stoneleigh Corporation was organized?

A. I don't know.

Q. For whom did you consider Mr. Hall to be acting in setting up Stoneleigh Corporation?

MR OWEN: I object to that on all grounds.

MR REITER: (To Interpreter) Let him answer.

A. For me actually.

Q. For what purpose was Stoneleigh Corporation established?

MR OWEN: Object to the form.

A. In order not to have a person's name appear. In this name, Stoneleigh Corporation, there was no name of a person.

Q. After Stoneleigh Corporation was organized, was any

property transferred to the corporation?

A. Yes.

Q. Will you tell us what occurred?

A. Mrs. Bochmann did not want to have her name appear as an owner and said she did not want to have anything to do with the business.

Q. Was any property transferred to Stoneleigh Corporation?

A. It was made in the shape of a deed of gift, because the account in the New York Trust Company was in the name of Mrs. Bochmann. It had to take this way of transfer to Mrs. Dwyer, I think.

MR REITER: It is now 12:15. We are adjourning for lunch. Mr. Schmieder will go home for lunch and a rest. We will return at 3:00.

MR OWEN: That's fine.

(A recess was taken from 12:15 to 3 o'clock. All parties to the proceeding present when the proceeding recessed were again present.)

BY MR REITER:

Q. Mr. Schmieder, after Stoneleigh Corporation was created, was anything done with the account in the name of Jenny Bochmann with the New York Trust Company?

A. Yes.

Q. What was done?

A. The account was transferred to the Stoneleigh Corporation.

Q. Did you instruct Jenny Bochmann to make this transfer?

MR OWEN: Object to the form of that question.

A. Yes.

Q. Did Jenny Bochmann have any interest in Stoneleigh Corporation other than as your nominee in holding the stock?

MR OWEN: Object to the form.

A. No, I don't think so.

Q. Do you know of any other interest which she had?

A. No. She had no interest in it any more.

Q. Did she have anything other than a nominal interest at any time before?

MR OWEN: Object to the form.

(The interpreter spoke to the witness. The witness spoke to the interpreter. The interpreter then again spoke to the witness in German.)

MR OWEN: (To Interpreter) Translate what he said previously, please.

MR MEDVERD: He was only asking her...

MR OWEN: I know. But he responded with something, and I would like to get the response.

INTERPRETER: He said, "Tell it again," or "Say it again."

MR OWEN: He said, "What is a nominal interest?"

INTERPRETER: Yes.

MR OWEN: Well what was it that he said?

INTERPRETER: He said that he didn't understand the second part of the translation.

MR MEDVERD: That's all he said.

MR OWEN: Okay.

(To Interpreter) Go ahead. I thought he said, "What do you mean by nominal interest?"

INTERPRETER: No. He said, "What was the second part?"

MR OWEN: All right.

A. No. Actually not. It was not her money.

Q. Mr. Schmieder, are you familiar with the *Stahlhelm*?

A. Yes.

Q. Please tell us what you know of the *Stahlhelm*?

A. *Stahlhelm* was actually an association of war veterans that was established after the war.

Q. Which war was this?

A. Of the First World War -- or, in other terms, after 1918.

Q. Tell us a little bit about the purposes of the

Stahlhelm, Mr. Schmieder?

MR OWEN: Just to protect my record, I am going to object to this on the ground that there is no foundation laid that it was an organization that had purposes, or that he knew what the purposes were.

MR REITER: I will withdraw my question.

Q. Mr. Schmieder, are you familiar with the purposes of the *Stahlhelm*?

A. Yes.

Q. Can you tell us what they were?

A. Now this was a very important association, for -- as I said -- it was an association of war veterans. When the communism started to rise in Germany, it became an important organization that was against both the left and the right. It was against the SA and it was against the communists.

Q. About how large was the *Stahlhelm*?

A. I think it had more than one million members. I didn't count them but it was a very large organization.

Q. Did there come a time when you became a member of the *Stahlhelm*?

A. Yes.

Q. Do you recall about when that was?

A. About 1930.

Q. And do you recall for what period of time you

remained a member of the *Stahlhelm*?

A. Until the organization was dissolved by -- forcefully -- by the Nazis.

Q. Where did you belong to the *Stahlhelm*? In what place did you belong to the *Stahlhelm*?

A. This was called *Ost Gruppe Meerane*.

Q. Under what circumstances did your membership in the *Stahlhelm* terminate?

A. We were transferred forcefully into the SA.

Q. Do you recall approximately when this was?

MR OWEN: What is the SA?

MR REITER: *Sturmabteilung*.

MR MEDVERD: Brownshirts.

MR REITER: Well let me ask the witness that question and get it on the record from him.

Q. What do the initials "SA" stand for?

A. *Sturmabteilung* in German, which would be "Storm Troopers."

Q. Was this a part of the Nazi Party apparatus?

A. Yes. It was a Nazi Operation.

Q. Do you recall about when the *Stahlhelm* was taken over?

A. That was about the end of '33.

Q. Would you tell us what happened with respect to the

termination of your membership in the *Stahlhelm*?

A. Well, by being transferred forcefully into the SA as already mentioned.

Q. Did you take any action to terminate your membership at that time?

A. With SA? Or with...?

Q. Yes, with the SA.

A. I lived through the Party days of Nurnberg in 1934. A great deal of these days were propaganda against the Jews, and that gave me the fill of them -- of the Nazis. I then wrote a request to the Supreme Command of the SA asking for an honorable discharge.

Q. Were you at that time aware of any possible consequences of your making such an application?

MR OWEN: Let me note an objection to that question.

A. Yes, it was very dangerous. I justified my request by saying that I was a businessman, that I was on the road very much, and that it was nearly impossible for me to attend all the meetings and all the events.

Q. What were the possible consequences of which you were aware?

MR OWEN: I object to this also.

A. I would like to add to the previous question that I said -- among the reasons for my request -- that I could attend

very few of the meetings, and that this lack of attendance would shed a bad light on myself as a person.

MR REITER: (To Interpreter) Would you repeat my last question to him?

INTERPRETER: Yes.

(The interpreter spoke to the witness.)

MR OWEN: My objection continues, of course.

A. Of course, the Nazi members looked down their nose on me. However, they knew even before that they wouldn't get much out of me.

Q. What were the possible consequences of your application for discharge, that you were aware of?

MR OWEN: Same objection.

A. They were, for instance, business effects. You were more or less an outcast in business circles.

Q. Would the fact of the discharge from the Nazi group be placed on any record, to your knowledge?

MR OWEN: I object to that on all possible grounds.

INTERPRETER: (To Mr. Reiter) I've forgotten what you asked.

MR REITER: Let me state it again.

Q. Were there any other consequences of the application for discharge that you were aware of?

MR OWEN: Same objection.

A. The effects were felt later on because I was not a very popular person.

Q. Are you aware of any record having been made in the locality of your application for discharge from the SA?

MR OWEN: I have to put in an objection. There's no foundation for what kind of a record or anything else. And I object to it.

MR REITER: Let me strike it and put it again.

Q. Were you aware of the types of records which were kept on the residents of Meerane at this time by the local government?

A. Yes.

Q. Do you know whether the fact of the application on your part -- for a discharge from the SA -- was placed on those records?

A. Certainly, because I was discharged by registered letter from the SA.

Q. Were you aware of the consequences that followed upon the request for discharge of other members of the *Stahlhelm* from the SA in your area?

MR OWEN: Object to that.

Q. Were there, to your knowledge, other members of the *Stahlhelm* who applied for discharge from the SA?

MR OWEN: Just yes or no.

A. Yes -- a few.

Q. Are you aware of any consequences that followed upon their application?

MR OWEN: Object to the form.

A. Yes, of course. You were made to feel the consequences as far as public interests were concerned. As far as family and social interests were concerned, you were not bothered at that time yet. That came later.

Q. Were you in business before World War II?

A. Yes.

Q. What was the nature of that business?

A. We had a textile mill for dress fashions -- for ladies garments.

Q. Was this type of business subject to any kind of controls on materials during the war period?

MR OWEN: I object. There is no foundation laid basically for this.

MR REITER: All right.

Q. What was the name of this mill?

A. W. and H. Schmieder.

Q. Who was or were the owners of this mill?

A. I, alone.

Q. Was this firm in operation during the 1930's?

A. Yes -- it already started in 1882.

Q. And when did it cease doing business, if it did?

A. It happened when we had no more supplies to process. And that was in 1941... '41 or '42. And it happened not to my firm alone. It happened to others, and they were companies that were not Nazi-proof.

Q. Now during the World War II period, were materials that you required under a program of government allocation?

A. Yes. It started right after the war in '40.

Q. Could a firm in your business operate without an allocation of materials from the government?

MR OWEN: Object to the form.

MR REITER: Let me strike that.

Q. Were you familiar during this period with the system of government controls on materials for textile mills?

A. Well! If I am familiar! I knew that allocations went to the firms having the Golden Banner. And those firms who had sons that fell in the war were also favored in this manner of allocations.

Q. What is this Golden Banner of which you speak?

A. The Golden Banner was awarded for special performance in the Nazi way of thinking. It is true that the wages were very good -- quite good -- in these factories, but they also made a lot in the way of fringe benefits and other institutions, so as to be in a good light with the Nazis.

Q. Did you ever attempt to obtain a *Golden Banner* for your firm?

MR OWEN: I object to the form.

MR REITER: I'll rephrase it.

Q. What could a firm do in order to obtain a *Golden Banner*?

A. As I already mentioned, they could have many social institutions; and they could seek to whip the whole workers and employees into the Nazi line.

Q. Did you attempt to obtain a *Golden Banner*?

A. No.

Q. Why not?

MR OWEN: Object to that.

A. We were not that zealous.

Q. Do you know if you could have gotten a *Golden Banner* with the record of your application for discharge on the records?

MR OWEN: I object to that.

A. No, I don't think so.

Q. Do you mean that you don't know whether you could have? Or you don't think that you could have?

A. I was not interested in getting it at all.

Q. With the record of your application for discharge from the SA, could you have gotten the *Golden Banner* in any

event, if you know?

MR OWEN: I object to that.

A. No.

Q. What was your attitude toward Hitler?

MR OWEN: I object to that.

A. I always called him Mr. Hitler only.

Q. Did you have an attitude toward Mr. Hitler?

MR OWEN: I object to that.

A. In the beginning, there was this... they were swept off their feet practically when they had won over communism, and the success went to their heads -- to the Nazis' heads -- and we were in the presence of this inebriation with power that made them forget all proportions.

Q. Did you ever have occasion to express publicly your attitude toward Hitler and the Nazis?

A. Well I couldn't do that in a big meeting because that would have meant my immediate removal.

(The witness demonstrated by drawing his right forefinger across his throat.)

However, I had many friends among the little people who knew my attitude towards Hitler.

Q. Did you use a particular form of greeting in response to *Hell Hitler* during this period?

MR OWEN: I object to that.

A. Well, in public you couldn't very well do such a thing. But, among my colleagues -- in the Bowling Club where we had some diehard Nazis that were known everywhere, and where we met once a week -- I used to reply to their greeting *Heil Hitler*, I used to say *Heile Selassie*.

Q. Were you at that time aware of any possible consequences of your doing such a thing?

MR OWEN: I object to that.

A. Well, my bowling colleagues were personal friends of mine. They couldn't very well accuse me.

On the other hand, I was rather a well-known figure in our city; and if the Nazis could do without arresting well-known persons, they did without it -- especially towards the end of the war, this became very delicate.

Q. Did you have occasions during the Nazi period to have business relations with Jews?

A. Yes.

Q. What was the nature of those business relations?

A. They bought goods from me -- material fabrics.

Q. Were you represented by any Jews?

MR OWEN: I would object to the form of that.

MR REITER: I'll rephrase it.

Q. Did your firm have any Jews as its representatives?

A. Yes.

Q. Will you tell us what these were?

A. It was only possible for me to have them because I was not a member of the Nazi Party. For Nazi Party members, this would have been impossible.

I have kept my Jewish representatives until the end of '38 which was after that night of the window smashing, and that was already quite amazing for the town of Meerane.

Q. Was that Kristallnacht?

A. Kristallnacht -- when they smashed all the windows.

Q. What was the name of the Jewish firm that represented you?

A. In Berlin, I had two representatives: one was called Litton; the other's name I have forgotten. And in Breslau, I had very good representatives.

Q. What were their names, if you recall?

A. I do not remember the name of the Breslau representative, but though being a Jew he was a member of the German gymnasts association, or athlete's association.

Q. Were you aware of any problems that your firm might encounter as a result of continuing to deal with Jewish firms during the Nazi period?

MR OWEN: I object to the form of the question.

A. Surely.

Q. What were these dangers?

MR OWEN: I object to the form.

A. I was spied upon. And the hundred per cent Party members looked down their nose at me.

Q. Do you know whether the *Stahlhelm* continued to exist after the end of World War II?

A. Yes. This is possible in Western Germany.

Q. Do you know whether it did in fact exist?

A. Yes. It certainly does exist, but it is a veterans association, and it is also an old soldiers association; and these members are dying now one by one.

Q. Do you know who became the leader of the *Stahlhelm* after World War II?

A. For a "leader" would be saying too much. It was more of an honorary president. And it was General Field Marshal Kesselring.

Q. Are you familiar with Theodor Duesterberg?

A. Doctor Georg is the son of Duesterberg.

Q. Are you familiar with the father, Theodor Duesterberg?

A. Yes, I know him.

Q. Do you know whether he had some relationship with the *Stahlhelm*?

A. Yes. At the time, he was the second chairman of

the *Stahlhelm* and actually he was more of a leader than Mr. Seldte. He was an officer.

Q. Was Theodor Duesterberg, to your knowledge, ever a candidate for public office in Germany?

A. He was supposed to be Minister of War in the underground movement. So he told me personally.

Q. Did you have occasion to have any discussions with Mr. Duesterberg in the '30's?

MR OWEN: May I -- for the record -- at this point say that I don't see... I see where you see it is relevant, but I don't see where it is relevant. And I want to object on that ground.

Further, I don't see that any hearsay comments by a man as to why he did or did not get a public office having the slightest relevance in this lawsuit. These are self-serving statements by, apparently, an unsuccessful candidate who may have assigned almost any reason. And I feel they are of little merit. But you may go ahead.

Q. Did you have occasion to discuss the underground activities with Mr. Duesterberg during the 30's?

MR OWEN: I object to the form.

MR REITER: All right. Let me try again.

Q. Did there come a time when you had occasion to have any discussions with Mr. Duesterberg regarding the underground?

MR OWEN: Object to the form. There has been no foundation laid.

A. Yes.

Q. When was this approximately?

A. That was either in 1942 or 1943. I was in his apartment then.

Q. Do you know, of your own knowledge, whether Mr. Duesterberg was of Jewish blood?

A. He was lacking in his pedigree. He was lacking the Aryan grandmother. And upon finding out that, the Nazis dropped him.

Q. Do you know of any persons having knowledge of the details of your *Stahlhelm* experience, and of your discriminatory treatment, as you have testified to them?

MR OWEN: Object to this question on form and substance.

INTERPRETER: Excuse me.

"Discriminatory treatment," is that discrimination against him? Or...?

MR REITER: Against him.

A. Yes. They were -- some of them were -- old *Stahlhelm* members.

Q. Can you give us their names?

A. There was, for instance, my old friend Walter Kurz,

who was the founder of the *Stahlhelm* Group East Meerrane. He is dead. And he lived in Duesseldorf.

MR OWEN: What is the relevance and purpose of this line of inquiry, if I may ask?

MR REITER: Well to show that there are persons who could verify the statements that the witness has made here today.

Q. Go ahead with your list.

MR OWEN: You mean these names are being proffered for the hearsay statement that they would say the same things that Mr. Schmieder is saying if they were to be on the stand?

Is that what your proffer is?

MR REITER: I'm saying...

MR OWEN: That, by reason of naming the names, the trier of the fact is entitled to conclude that they would support this.

MR REITER: I don't care for the characterization as "hearsay." These are the names of people who had -- and have -- knowledge of the circumstances that Mr. Schmieder has testified to; and who, if they were called to testify, would be able to verify the statements that he has made today.

MR OWEN: Are you going to ask the trier of the fact to conclude that, from the fact that they are listed?

MR REITER: I believe this will speak for itself.

I am just asking...

MR OWEN: Well I object to it.

MR REITER: I am putting on the record the names of persons who, if they were permitted...

MR OWEN: Who he says, if they were permitted.

MR REITER: ...who he says -- if they were permitted -- would verify and expand in all probability on the testimony which the witness is giving today as to the discrimination he suffered at the hands of the Nazis.

MR OWEN: This is, I submit, hearsay and I object to it.

INTERPRETER: Can I give the last answer?

MR REITER: Sure.

A. The best press, or write-up, or discussion, that I have on *Stahlhelm* -- that I have -- was given to me by Doctor Eichler.

Q. What is the address of Doctor Eichler?

A. He last lived in Stadt Steinach, Oberfranken.

Q. Just give us a list of the names without explaining as to each one so we can move along.

MR OWEN: I would like to note my continuing objection, please.

Q. (Continued) Are there any other persons that you know?

(The witness spoke in German.)

MR GALLESKI: No.

MR OWEN: Please, Mr. Galleski, don't say, "No," to the witness.

MR GALLESKI: Because he isn't answering the question.

MR OWEN: I know. But he's answering, not you.

A. There is, of course, my wife; there's my daughter -- who are informed. And there's Anneliese Hunkins. And there's Rolf Stopp.

Q. Where does he live?

A. He has died since. He used to live in the Black Forest near Schönaue.

Q. What others?

A. I knew a Mr. Grüss.

There was an old friend of mine, Walter Malz. He lived in Lendersdorf in Westphalia, and he has documents there.

Further, Doctor Harold Seldte -- who wrote a book on *Stahlhelm*.

And, Mr. Duesterberg's son, Doctor Georg.

I could go on enumerating a great many, but this is enough.

MR. REITER: I have no further questions.

You may cross-examine.

MR OWEN: (To Reporter) Would you mark this Defendant's Exhibit AA for identification, please?

(Marked by reporter.)

CROSS EXAMINATION

BY MR OWEN:

Q. Mr. Schmieder, I show you a package of papers which has been marked Defendant's Exhibit AA for identification, and I ask you if the third white sheet thereof is a true and accurate photocopy of an instrument bearing your signature?

A. I have signed this in prison. I signed this in Zwickau Prison; this was when I was a prisoner there.

Q. This was a Power of Attorney running to your son, was it not?

A. Yes.

Q. Now your son -- using that Power of Attorney -- made a claim with the Office of Alien Property for the return of some of your property, did he not?

MR REITER: Objection on the ground that presumably these documents -- which we have not as yet seen -- speak for themselves.

MR OWEN: I'm asking whether his son did this.

MR REITER: We should have an opportunity to examine these documents which have been marked before he's asked these questions.

MR OWEN: Mr. Reiter, I'm asking the witness a question, and either he can answer it or he can't.

MR REITER: I'm simply interposing an objection.

MR OWEN: All right.

(To Reporter) Now, could we have the question re-read to the witness?

REPORTER: "Now your son -- using that Power of Attorney -- made a claim with the Office of Alien Property for the return of some of your property, did he not?"

(The interpreter then spoke to the witness.)

A. In the United States?

Q. Yes.

MR REITER: I further want to object in that he is being asked to testify as to what somebody else did, without any foundation being laid as to any basis that he might have for his knowledge.

MR OWEN: (To Interpreter) Would you ask the witness to answer my question?

(The interpreter spoke to the witness.)

A. Oh yes. He asked the Alien Property Office in the United States.

(Mr. Galleski, Mr. Reiter and the witness then conferred.)

MR OWEN: No, no, Mr. Galleski.

May the record show that counsel and the witness are conferring in the course of the return of the answer, which I think is highly improper.

MR REITER: We just wanted to know...

MR OWEN: Mr. Reiter, if you want to confer with him after he has given an answer and before I put my next question, I have no objection. But, if I have a question to him, for you to confer with him before he answers the question I think is inappropriate.

MR REITER: It's a question of whether or not he even understands the question.

MR OWEN: Well let's ask him if he understands the question.

MR REITER: Ask him if he understands the question then. He seems confused.

MR OWEN: All right. Let's find out.

(To Interpreter) Would you ask him?

(The interpreter spoke to the witness.)

WITNESS: No.

MR OWEN: (To Interpreter) Would you put it to him again and ask him what it is he doesn't understand about it, please?

(The interpreter spoke to the witness.)

WITNESS: It is possible. I haven't seen it myself

because, after all, I was in prison until 1950.

Q. I show you white sheet number 2 of Defendant's Exhibit AA for identification, and ask you if you recognize the signature of your son?

A. My son?

Q. Is that the signature of your son?

A. To whom is it directed?

Q. The question is whether that is the signature of your son.

MR REITER: That should be if he knows.

MR OWEN: All right -- if he knows.

A. This is set up by Sommerich -- a well-known Stuttgart attorney -- who tried to release my one-third part, that we mentioned, in Washington.

Q. Mr. Schmieder, you are familiar with the signature of your son, are you not?

A. Yes.

Q. And the signature on page 2 of Defendant's Exhibit AA, is that a photocopy of your son's signature?

A. Yes, of course.

Q. Now, Mr. Schmieder...

MR REITER: May I interrupt a moment?

Counsel is now examining and is questioning on some certain documents which Counsel for the Plaintiff has not had

an opportunity to see. And we request the opportunity to look at this before any further questioning of the witness should continue.

We should have an opportunity, at least, to see from what he is being questioned.

MR OWEN: Mr. Reiter, as the documents are being presented to him, I have no objection to your examining them. This is cross-examination of your Plaintiff, pursuant to an order that you have obtained.

Now we all have repaired some 3,000 miles -- and in my case for the difficult task of cross-examining a man without having had the opportunity of talking with him, which you gentlemen have had for some two days.

I have the right to present to him documents without giving them to him for his study, and to ask him questions based upon his best recollection as of his examination of them. And this is the same as if he were on the stand in New York and I were cross-examining him there.

MR REITER: I would note an objection to this procedure.

MR OWEN: All right. But I believe I am entitled to the same rights I would have if you had brought him to New York -- which is, to cross-examine him by showing him documents and asking him what they mean.

Q. Mr. Schmieder, I show you -- I believe it's page 9 -- page 10 of the white pages of Defendant's Exhibit AA for identification, and ask you whether that page at the bottom bears your signature?

A. Yes. But what does it mean?

Q. It does bear your signature?

A. Yes.

(The witness gave the exhibit to Mr. Galletski.)

MR OWEN: May the record show that Mr. Galletski has taken the exhibit from the witness who was examining it, and is now himself examining it. I have no objection to your looking at the pages which...

MR GALLESKI: I believe when a document is marked that counsel for the other side can inspect it.

MR OWEN: It has only been marked for identification, and I'm cross-examining the witness from it. I believe this procedure by you is wholly out of order.

MR GALLESKI: So I am now reading Defendant's Exhibit AA.

MR OWEN: In other words, you are terminating my examination.

Is that what you are saying at this point?

Or may I continue?

MR REITER: As far as I am concerned, you may continue.

MR OWEN: All right. Let me then have the exhibit please.

(Mr. Galleski showed the exhibit to Mr. Reiter.)

(Mr. Galleski then spoke to the witness.)

MR OWEN: May the record show that counsel and witness are now having a conference concerning the document.

MR REITER: I would deny that -- that there is any conference regarding the document.

Mr. Schmieder has simply made some kind of statement in German which I cannot understand. Mr. Galleski spoke to him. There has been nothing further said.

MR GALLESKI: Mr. Schmieder has asked me where that document came from. And I answered, "From Washington."

MR OWEN: Well we would avoid all of this if I could proceed without...

(Mr. Galleski continued to examine Defendant's Exhibit AA.)

MR OWEN: May the record show that Mr. Galleski has examined Exhibit AA for identification.

(The witness and Mr. Galleski spoke to each other.)

MR OWEN: May I ask what's going on here?

MR REITER: Let's continue. Let's continue with the examination.

MR GALLESKI: He must get the document explained

to him.

MR REITER: This is something that will be explained to him in due course.

Q. Now, Mr. Schmieder, your signature -- which you have identified on page 10 of Exhibit AA -- is to a schedule that you submitted in support of trying to recover your one-third funds that you mentioned. Is that correct?

MR REITER: I object to this question on the ground that it is much too complicated.

MR OWEN: All right. I'll simplify it.

MR REITER: Further, there has been no foundation laid that he in fact did make this application.

Now the only testimony that has been in the record is that he gave his son a Power of Attorney while he was in prison, and that his son could possibly have made this. There has been no testimony that Mr. Kurt Schmieder actually filed anything.

MR OWEN: All right.

Q. Mr. Schmieder, this page 10 of Exhibit AA was signed by you in Löffelbach in January of 1955, was it not?

A. Yes.

And who was given this?

Q. That serves as my question of you.

A. So you must know where this thing came from.

Q. Mr. Schmieder, I got this document from the files of the United States Government.

A. It is possible that prior to that time, or after that time, some claimant came from Munich trying to claim a part of my fortune in the name of Sommerich. This is quite possible.

Q. Isn't it a fact, Mr. Schmieder, that this page 10 and the following pages were submitted by you to the United States Government to try to recover the one-third interest of which you speak?

MR REITER: I object to that question on the ground that it is contrary to the last answer that the witness gave to the effect that it was possible that somebody -- claiming a portion of his interest -- might have submitted that. In light of that, Mr. ...

MR OWEN: Well I'm entitled to explore his recollection, particularly where you say he's an 85 year old gentleman, and it's 5 o'clock in the afternoon, and he had a rest from 12:15 to 3 o'clock, and...

MR REITER: I'm not objecting on that score. I haven't asked for a recess.

But I'm saying that his last answer was positive on that issue. He said it may have been submitted by somebody else. He didn't indicate it was submitted by him.

MR OWEN: Mr. Reiter, he said it bore his signature.

MR REITER: That's all he said -- just that it bore his signature.

MR OWEN: And I'm asking him whether he doesn't -- on reflection -- recall that he submitted that to the United States Government.

(To Interpreter) Would you put my last question to the witness, please?

(The interpreter spoke to the witness.)

A. I did not submit it to them. They submitted it to me.

Q. By that, do you mean they furnished you the form?

A. Of course.

Where should I have gotten those?

Q. And didn't you, Mr. Schmieder, then fill out the form and sign it?

A. I do not recollect now, but I may have correspondence in my files that have some reference to it.

Q. Now I show you page 11, Mr. Schmieder, and point to a paragraph beginning there (indicating), which begins, "According . . .," and I would ask the interpreter to read that paragraph to you and ask you whether you prepared that paragraph for submission to the United States Government?

MR REITER: I object to this question on the

grounds that the piece of paper that has been shown to the witness has no signature on it. There's no indication what it is a part of. It is written in the English language which the witness is not conversant with. And I just simply think that showing a man a piece of paper, and asking him whether he prepared it -- without any further foundation -- is inappropriate. Therefore, I object.

MR OWEN: I have provided in my question that the interpreter would read the paragraph to him in German.

Do you still maintain your objection?

MR REITER: I still maintain my objection.

Of course, you can ask the question.

MR OWEN: (To Interpreter) This is page 11. Would you read it to him?

(The following paragraph was read to the witness by the interpreter: "According to such information, Claimant was a staunch anti-Nazi and evidenced his opposition by word and deed, including intercourse and business relationships with Jews and befriending of Jews from Nazi persecution, with the result that a manufacturing plant owned and operated by Claimant at Meerane, Germany, was shut down in 1942 by Nazi authority, and thereupon looms were sold and dismantled with consequent damage.")

MR REITER: Now the question is whether he

prepared it? Is that...?

MR OWEN: First, the question is: Did he prepare...

Q. Mr. Schmieder, did you authorize Katz and Sommerich to put that statement into your application for the return of the one-third interest?

MR REITER: I object on the ground that the question is vague. It is complicated. It assumes that Katz and Sommerich were in contact with him, that they were representing him -- which has not been established.

And who knows what "authorize" means here?

I just think it's the kind of question that cannot be answered.

MR OWEN: (To Interpreter) Let him answer if he can.

INTERPRETER: What was...?

MR OWEN: The question is did he authorize Katz and Sommerich to make this statement.

(The interpreter spoke to the witness.)

A. Yes. Katz and Sommerich were entrusted with it.

MR REITER: (To Interpreter) Did he answer yes, he authorized them to do it; or, yes, they were entrusted with the case?

INTERPRETER: No, not with the case. They were commissioned.

(A discussion was held between counsel and the interpreter.)

MR REITER: Well I object to the question again and ask that it be broken down and stated better, because it's quite uncertain -- as we have discussed with the interpreter -- whether it was intended that the witness meant that he authorized the preparation of this paragraph; or that, yes, Katz and Sommerich were authorized to make some kind of representation. It is quite uncertain.

MR OWEN: Well if you have that problem, I think that may be simply answered.

Q. Mr. Schmieder, were Katz and Sommerich authorized to make the representation which has just been translated to you from page 11?

MR REITER: I object on the ground that there is no indication by whom. He wouldn't know whether it was authorized by someone else.

MR OWEN: The question is: Did he authorize?

MR REITER: Well that's different.

MR OWEN: Well that's what I just asked him.

(To Interpreter) Would you ask the question again please?

MR REITER: That's not what you asked him.

(The interpreter spoke to the witness.)

WITNESS: Who wrote this?

MR OWEN: I don't know. I'm asking you if Katz and Sommerich were authorized by you.

(The interpreter spoke to the witness.)

WITNESS: Whether Katz and Sommerich wrote that?

MR OWEN: I'll ask the question again.

Q. Mr. Schmieder, were they authorized by you to make that statement in those papers?

A. They asked my son because I was in prison until the end of 1950. And they have just taken this up. That is true.

MR OWEN: (To Interpreter) What is true? That they were authorized?

INTERPRETER: No. That they have taken... That these are the consequences of his leaving the SA.

Q. Mr. Schmieder, this form was signed in 1955.

A. This is the same.

Q. Mr. Schmieder, this form was signed by you in January 1955, is that correct?

A. It is possible, yes.

Q. This is the reverse side of that form, is it not?

A. I do not remember this exact presentation.

MR OWEN: For the record, Mr. Reiter has asked that we identify this. These are pages 10 and 11 of

Defendant's Exhibit AA for identification.

Q. Now, Mr. Schmieder, it was your claim that you were an anti-Nazi, and that you had business relationships with Jews, and other things, such as set forth in the paragraph that's been read to you.

MR REITER: I object.

(To Interpreter) Wait a minute. Don't put that answer in.

MR OWEN: The answer is "yes."

MR REITER: I want to insert an objection.

MR OWEN: All right. Insert your objection.

MR REITER: That, one, this document presumably speaks for itself.

Second, the word "claim" was used in the question without indicating what kind of claim -- whether it is this particular claim or...

MR OWEN: I identified it as the paragraph that was being read to him in German.

MR REITER: But the word "claim" is so uncertain that I do not believe that the question can properly be answered in order to give the answer any significance.

Now go ahead and ask him.

MR OWEN: All right. I'll do it the long way.

Q. Mr. Schmieder, it was your claim -- was it not? --

as follows: And I will again ask Mrs. Toepfer to read to you, in German, the paragraph from page 11, which begins, "According to such information....," and ask you if that wasn't your claim before the Alien Property Office?

MR REITER: Let me interject an objection before you read it. Maybe we can avoid it.

The word "claim" here -- without giving any indication as to what time; what kind of claim; whether he made it, since there is no indication that he ever made any claim, only that his son may have made a claim -- is simply not a question that is based upon any properly laid foundation at this point.

MR OWEN: Just to state my position on the record, so that we can get on, it is...

MR REITER: I don't object to his answering it.

MR OWEN: ...it is that...

MR REITER: I mean I'll allow him to answer it, but I'll object.

MR OWEN: Okay.

(To Interpreter) Read that to him and ask him if that wasn't his claim in 1955.

(The interpreter spoke to the witness.)

MR GALLIESKI: (To Interpreter) Now what's the question? Repeat the question to him.

(The interpreter spoke to the witness.)

A. I do not know whether this claim stems from me or from Katz and Sommerich.

MR OWEN: (To Interpreter) If the claim stems from him, was that his claim?

MR REITER: Now wait a minute. Is that a question to Mr. Schmieder?

MR OWEN: Yes, it is a question to Mr. Schmieder.

MR REITER: Well put it directly.

Q. If the claim stems from you, Mr. Schmieder, was that your claim in 1955?

MR REITER: Let me say that I object to that, "If the claim stems from..."

MR OWEN: He said he doesn't know whether it was his, or from Katz and Sommerich. He said it was from one of the two. I am asking: If it was his, is that his claim?

MR REITER: I think we're getting into the realm of fantasy and speculation.

MR OWEN: If I can't get something in without forcing a complete repetition of these things -- with this gentleman who is getting tired -- it's going to put us into a third day, let alone a second day.

MR REITER: Well he has already given the best answer he can give. He doesn't know.

MR OWEN: He said it was either his or from Katz and Sommerich. And I asked him a simple question: If it's yours, is that your claim?

(To Interpreter) Please ask the question.

(The interpreter spoke to the witness.)

MR REITER: I object.

A. I still don't remember whether it was my claim. I think it was drafted by Katz and Sommerich, and it is a great pity that I never got to know Mr. Sommerich -- who represented me -- personally. Mr. Sommerich did all the negotiations with my son.

Q. Now is this claim -- as it was read to you -- is that an accurate statement of your claim in 1955?

MR REITER: I object on the ground that the question is asking for a legal conclusion as to whether that is an accurate statement of his claim, when he has said that he is not sure whether that is even his claim.

MR OWEN: He said he doesn't know who prepared it. He said Katz and Sommerich did the preparation. And I'm asking him: If they did the preparation, does he stand behind that claim?

MR REITER: That is not the question that has been asked.

MR OWEN: I'll ask him the question.

Q. Is that your claim?

MR REITER: I object.

MR OWEN: In 1955.

(To Interpreter) May we have an answer?

INTERPRETER: Shall I say: If it was prepared, do you stand behind it?

MR OWEN: Is what was read to you in fact your claim in 1955?

(The interpreter spoke to the witness.)

A. I cannot say that accurately now.

Q. This morning and this afternoon, Mr. Schmieder, you have testified to certain anti-Nazi activity, have you not?

A. Yes.

Q. And did you testify to business relationships with Jews today?

A. Yes.

Q. And that claim on page 11 of Defendant's Exhibit AA, was that the same claim you were making in 1955?

MR REITER: I object on the ground that he said he doesn't know whether that was the claim which he made in 1955. It could have been the same subject matter, but it didn't necessarily have to be his claim.

And, as we all know, his testimony this morning was

a great deal more extended than just these few words in that paragraph which has been proffered to the witness.

MR OWEN: (To Reporter) Would you mark this Defendant's Exhibit BB please?

(Marked by reporter.)

Q. Mr. Schmieder, I show you Defendant's Exhibit BB for identification -- a single-spaced copy of a letter -- and ask you if you received the original of that letter?

MR REITER: I object on the ground that this letter is not signed. There is no indication of the source, where it came from. And, insofar as we are concerned now, it is entirely hearsay. It's dated 1962.

MR OWEN: I'm asking only if he received the original.

A. (In English) It's possible. But at that time Mr. Sommerich maybe died. This Henry Wilmann (phonetic) is another person.

Q. Do you have your correspondence file here today?

A. No, not from Katz and Sommerich.

Q. Have you your correspondence file with Herr William Graupaer?

MR REITER: Incidentally, I object to this whole line of questioning because apparently these people -- Katz and Sommerich -- are some type of attorneys; and the claim is

presumably that Mr. Schmieder is... was a client and, therefore, it would certainly be privileged in any event.

MR OWEN: All right.

Q. Mr. Schmieder, I'll ask you again: Do you have a recollection of receiving the original of that letter from Katz and Sommerich?

MR REITER: I object on the ground of privilege, as well as the other objections that have been previously made.

MR OWEN: The privilege is voided, and I'll get to that.

MR REITER: Furthermore, it has been answered. He said it's possible; he doesn't know.

Q. Would you or your counsel kindly examine your records and determine whether you did?

MR REITER: I object. This is an inappropriate question. This is again privileged information in any event. I don't think you can ask for that kind of a commitment from the witness.

MR OWEN: You can, because he can come in tomorrow morning -- if he finds it -- and we can mark it. And if there is a privilege, there's a privilege. And if there isn't, there isn't.

Q. Mr. Schmieder, I ask you again, would you search

your records please and see if you can find the originals with Herr Graupner?

A. (In English) I must see, but I don't know.

(The interpreter spoke to the witness.)

WITNESS: (Through Interpreter) Can I keep this until tomorrow?

MR OWEN: *Das! Nein! Das ist meine. Ich habe nur eine. Ich will dir der Daten geben und der adresse.*

(Translation of above: This! No! This is mine. I have only one. I will give you the data and the address.)

WITNESS: (In English) Okay.

MR OWEN: (To Reporter) Would you mark this Defendant's Exhibit CC for identification?

(Marked by reporter.)

Q. Mr. Schmieder, I show you Defendant's Exhibit CC for identification consisting of two pages, and ask you if that letter bears your signature there on the second page?

MR REITER: For the record, I want to interpose an objection to the procedure that has been followed in having certain documents marked before they are shown to opposing counsel.

MR OWEN: Well, may I say that I overheard Mr. Galleski say to you that he had seen Exhibit CC some long time ago and did not regard it as a startling document.

MR GALLESKI: I didn't say that.

MR OWEN: Well you approximated that.

MR REITER: Aren't we getting into some kind of an unnecessary discussion?

MR OWEN: I don't think so.

MR REITER: My objection was procedural entirely.

MR OWEN: Very well.

(To Interpreter) Would you ask the question?

INTERPRETER: Would you repeat the question?

MR OWEN: My question was: Is that your signature on the bottom of Exhibit CC?

A. Yes, it is my signature.

Q. Now, Mr. Schmieder, do you now recognize Exhibit BB as being the letter that you enclosed when you sent Mr. Graupner this letter Exhibit CC?

A. This (indicating) was earlier than that (indicating) one.

INTERPRETER: Exhibit BB was earlier than Exhibit CC.

(Answer Continuing) This letter (indicating) -- the white one -- is written after I had met Herr Graupner in Munich in 1962.

MR REITER: May the record reflect that the witness was referring to Defendant's Exhibit CC for identification.

(Answer Continuing) I do not think that there is a connection between the two.

Q. Mr. Schmieder, in the second paragraph of Exhibit CC for identification, it reads: *Einliegend lasse ich ihnen wie besprochen eine Brief der Anwälte Katz und Sommerich.*

(Translation of above: As we discussed, enclosed is a letter from Attorneys Katz and Sommerich.)

A. Of what date?

Q. November. I ask you whether this letter of June 11, 1962, is not the letter that you speak of in the letter of November of 1962?

MR REITER: I object on the ground that the witness has already answered that question and said that he... he answered in the negative.

MR OWEN: No, he didn't answer.

(To Interpreter) May I have an answer to my question please.

(The interpreter spoke to the witness.)

A. I cannot say it. I hardly believe it.

Q. Mr. Schmieder, did you type Exhibit BB yourself? This is in your typing, is it not?

A. Perhaps. It may be.

WITNESS: (To Mr. Owen) Did you ask for a copy of this in Frankfurt?

MR OWEN: No.

(To Interpreter) Is this his typing or not?

MR REITER: He said it could be. He has answered the question. He has already answered your question.

MR OWEN: All right.

Q. Now, Mr. Schmieder, did Katz and Sommerich tell you that the United States Government had dismissed your claim for the return of your one-third money?

MR REITER: I object on the ground that apparently there is an attempt here to establish an attorney-client relationship which is entirely inconsistent with his being asked to disclose a communication from attorney to client. I think the question is terribly vague and I object to it.

Q. Mr. Schmieder, can you read the second paragraph of this letter in English and understand it?

MR OWEN: And I'm referring to Exhibit BB.

MR REITER: I object on the ground...

MR OWEN: Let's get an answer.

MR REITER: I want to object to the question.

MR OWEN: On what ground?

MR REITER: I object on the ground that we have established that this man -- although he does have some knowledge of English -- does not understand English good enough to respond to questions. And by asking him to attempt to read

this English letter, we're now taking away the whole benefit of having an interpreter here.

MR OWEN: Well let's find out. He lived in the United States for some ~~ten~~ years. So let's find out.

MR REITER: I deny that last statement. It was a matter of months, as I remember.

(The witness was handed the document.)

A. This is correct.

MR OWEN: May the record show that the witness has referred to paragraph 2 of Exhibit BB for identification, and has said, *Das ist schon richtig*, which I take it means...?

INTERPRETER: This is correct, or right.

MR OWEN: ...this is correct.

Q. And were you advised so by Katz and Sommerich?

MR REITER: I object. I don't understand the question. I doubt whether the witness can understand it. *Advised so?* In what respect? It refers to the paragraph of a letter with a number of sentences -- consisting of at least 10 to 12 lines -- and he is asked whether he was *advised so*.

He has already said that he doesn't remember receiving this letter. And by saying that he can make it out doesn't mean that he should be placed in a position of saying that he was advised, when he denies right now that he has received this letter.

Furthermore, again, it's a privilege.

MR OWEN: He has identified and said that that paragraph is correct, the second paragraph in Exhibit BB.

MR REITER: The question before him was whether he could read it and he said, yes.

MR OWEN: And he said it is correct. He said it is correct, referring to the paragraph.

MR REITER: Well apparently you and I have a different understanding.

MR OWEN: May I have the question read back by the reporter so we'll have no problem at all.

Mr Ellenbogen? Please!

REPORTER: "Now, Mr. Schmieder, can you read the second paragraph of this letter in English and understand it?"

Q. Mr. Schmieder, when you were looking at this (indicating) and said, *Das ist richtig*, you meant that what is stated in there is accurate, is that correct?

MR REITER: I object on the ground that that was not the question...

MR OWEN: I'm asking him now.

MR REITER: The record stands for...

MR OWEN: All right. I...

MR REITER: May I make my objection, please?

MR OWEN: Please.

MR REITER: The record -- the answer -- stands for itself. And if you want to ask him another question, you can ask him; but don't ask him to interpret something you and I have disagreed upon.

Just ask him the direct question then.

Q. Mr. Schmieder are the facts set forth in paragraph 2 of Exhibit BB correct?

MR REITER: I object on the ground that he is being asked for a blanket answer to a whole paragraph of 10 to 12 lines. He should be asked each individual item, if you want an answer. But this is too much.

MR OWEN: Mr. Reiter, he said he could read it in English. I am now asking him if it represents the facts.

(The witness spoke to the interpreter.)

INTERPRETER: He says Katz and Sommerich wrote that.

MR OWEN: Wrote that? (Indicating exhibit.)

INTERPRETER: Yes.

Q. And that's what they told you?

MR REITER: I object to that.

A. I must look for the original and then I can tell you.

Q. Now, turning to Exhibit CC, Mr. Schmieder -- this letter. Do you say in there, starting with this sentence: "Accordingly, the only possibility is compensation by the

Federal Republic"?

A. This is possible and this is why I wanted to have documents from Graupner. I didn't know at the time at what exchange rates I would be dispossessed.

MR OWEN: (To Interpreter) Let me ask you: Which words in here -- if any -- say, "only possibility"?

INTERPRETER: *Nur möglich -- nur ein entschädigung möglich.*

Q. Mr. Schmieder, in this letter, do you say, "Only compensation through the German Bundesrepublik is possible"?

MR REITER: I object to this question on the ground that the letter speaks for itself.

MR OWEN: I am asking him whether that's what his letter in fact says.

MR REITER: If Mr. Owen requires a translation, then he can either have the interpreter -- whom we have here -- translate it...

MR OWEN: I've got to ask the witness a question about it.

MR REITER: May I state my objection?

MR OWEN: Sure.

MR REITER: My objection is grounded on the fact that what the witness is being asked here is to give the meaning of something that is untranslated, based upon a partial

translation which counsel apparently has in English; and the best way to obtain an indication of what it is, is to have our interpreter here translate it, and then ask Mr. Schmieder a direct question.

MR OWEN: That's what I thought I had done. It's difficult, where Mr. Schmieder is dealing with German and I've got to deal with him in English. And I wanted to direct his attention to that, to be sure that we're both talking about the same language. And then I'm going to put another question based upon that as a foundation.

MR REITER: I think it should be done through the interpreter. That's why she's here. And I object.

MR OWEN: I'm going to ask it anyway.

Q. Mr. Schmieder, what does the word *war* mean?

(Mr. Galleski spoke to the witness.)

MR OWEN: Mr. Galleski! Please!

MR GALLESKI: I can talk with my client.

MR OWEN: No, you can't. You can't even shake your head at him.

MR REITER: I object to this whole procedure because he is attempting to use the witness as an expert on the German language when he's got an interpreter here who can put that into English. Mr. Schmieder is not an expert on the English language.

Q. Mr. Schmieder, do you remember writing this letter Exhibit CC for identification?

A. If it is to Herr Graupner, then I have written it to him.

Q. And you remember writing this letter?

A. Yes, I did write the letter.

Q. Now what, sir, does the word *nur* mean?

MR REITER: I object on the ground that this man can only say *nur* is *nur*. He's not an expert on translating German into English.

Now we have an expert on that -- an interpreter -- who is fully qualified.

And I object.

MR OWEN: Let me put it another way then.

Q. Did you say in this paragraph...

A. (In English) *Nur*, it says not much.

Q. It says "only"?

A. This word doesn't mean much. It was written in 1962. Now the year is 1973 and things have changed a lot.

Q. Does the word *nur* mean something different today than it meant in 1962?

A. Yes.

Q. What did the word *nur* mean in 1962?

MR REITER: I object on the same ground, that this

man has not been qualified as an expert in translating or interpreting German into English. And all he can say is nur is nur.

MR OWEN: I'm asking him to say what the difference in the words in German between now and 1962.

MR REITER: But he's not an expert. He is not a man who has any qualifications.

MR OWEN: He has lived in Germany all of his life. He was born a German. He speaks German. He writes letters in German.

Are you telling me that I may not question him when he says that there has been a change in the meaning of a word?

MR REITER: I'm saying that he has not been qualified as an expert on the meaning of the German language in 1972, 1962, or 1902.

MR OWEN: He has said there is a difference and I am asking him what it is.

MR REITER: I object.

MR OWEN: I'll have an answer.

A. This is going to be decided now to a greater or lesser extent.

Q. By whom?

A. For instance, we have discussed the whole *Stahlhelm*

business that we did not discuss before.

MR OWEN: Well let me say on the record, Mr. Reiter, I would think that it would help us all along if -- instead of objecting to this -- if I could put to him the simple question of whether or not that language doesn't read: "The only possibility is compensation by the Federal Republic." I would then go along and we wouldn't have wasted the last ten minutes.

First it was over the first page of his letter. Then what does the word mean. And then when he says it has been changed. And he now says he has been talking about the *Stahlhelm*.

I've got -- with a normal witness -- about an hour to an hour and a half of examination. But we could go -- with what I have -- all day tomorrow. And this is the kind of thing that will happen if I am not permitted to say to him very simply: Mr. Schmieder, does that language mean so and so.

MR REITER: Mr. Owen, in response to your statement I would indicate to you that -- as you know -- that I am as anxious as you are to complete this deposition.

On the other hand, I can't overlook what I consider to be improper questions. You have asked this question of him over my objection two or three times, and he has answered it. What else can I do?

MR OWEN: You haven't let me get an answer, because I still haven't gotten down to that particular sentence to get an answer.

MR REITER: I have never stopped the witness from answering.

MR OWEN: All right. Then let me put it again.

If I am wrong, then I apologize.

But let me put it again to him.

MR REITER: I hope you are not going to repeat the same question.

MR OWEN: I am.

MR REITER: Because you have put it to him, as I remember it, two or three times, and...

MR OWEN: I've never gotten an answer.

MR REITER: ...and he has answered to the best of his ability each time. And he'll probably answer the same way the next time. I think it is terribly repetitious.

Q. Mr. Schmieder, by the language here beginning, *Dennach*, are you there telling Mr. Graupner that, accordingly, the only possibility is compensation by the Federal Republic?

MR REITER: I would interpose the same objection. It speaks for itself. And if you want an interpretation of it, you've got an interpreter here. You also, I believe, have in your hand probably a translation of it.

This man is not an expert. If you are asking him what he was telling Mr. Graupner, then ask it to him straight. Don't tell him what he...

MR OWEN: All right.

Q. What were you telling Mr. Graupner?

A. That possibly, in that case, there should be compensation by the German Federal Republic -- by the German State.

Q. Now, aren't you saying that that is the only source of compensation?

MR REITER: I object on the ground that he has been over this now for the last fifteen minutes.

MR OWEN: Let him answer it and then we will be finished.

MR REITER: Let me put my objection in, please.

MR OWEN: All right.

MR REITER: And then let him answer.

We have been over this time and time again. I asked you to ask him directly. He answered. I didn't object to his making a response. He responded. And now you are again after him. What else can he say beyond what he has said up to now?

MR OWEN: (To Interpreter) May I have an answer to my question please?

INTERPRETER: May I have the question read back?

MR OWEN: (To Reporter) May we have it read back, please?

REPORTER: "Now, aren't you saying that that is the only source of compensation?"

MR REITER: Furthermore -- let me add one more objection -- that this man is not an expert as to the possible sources of compensation for his property.

MR OWEN: That's what he's saying here.

MR REITER: You are asking him to qualify? How would this be relevant to anything? -- his conclusions?

MR OWEN: It is relevant to his state of mind.

MR REITER: And his state of mind, with respect to what possibilities there are, bears -- insofar as I can see -- on none of the issues in this case.

MR OWEN: (To Interpreter) May I have an answer please?

A. In 1982, the law -- according to which the German State might possibly compensate -- did not exist.

MR OWEN: It is not responsive.

Can I put the question again?

MR REITER: I object to that. You've asked that how many times now?

MR OWEN: My question to him is whether he is not

saying to Mr. Graupner that that is the only possibility.

MR REITER: You have asked that how many times now?

MR OWEN: And he has evaded it in this last answer.

MR REITER: He gave the answer to the best of his ability.

How can you get any more out of him by asking him it a sixth or a seventh time?

MR OWEN: Because he didn't answer with the meaning of his own language.

That's what I'm after.

MR REITER: Yes he did.

MR OWEN: That's what I'm after. And he hasn't answered that. All he's said is that the law didn't exist.

MR REITER: You asked him what he intended by that, and he told you -- how many times? -- what he intended by writing that. Just because he doesn't say to you what you want him to say doesn't mean that he's not telling you what his meaning was in writing that.

I think you're beating it to death.

MR OWEN: I think we could save a lot of time if you would just let him answer the question.

MR REITER: I let him answer. I made no objection. What else do you...?

MR OWEN: But his answer was not responsive to it.

MR REITER: But I can't help what his answer was.
He answered the question.

MR OWEN: It was not responsive.

MR REITER: But he answered it.

Now, how many more times are you going to ask him
to answer it?

MR OWEN: Until I get a responsive answer.

MR REITER: Then we'll be here all night I would
suspect.

MR OWEN: All right.

(The interpreter spoke to the witness.)

MR REITER: Wait! Wait! There's no question before
him now.

MR OWEN: I'm putting it again.

MR REITER: But there's no question before him
right now.

(To Interpreter) Did he ask a question?

INTERPRETER: No.

MR REITER: I want a new question, not for you to
keep on asking...

MR OWEN: I'll ask the reporter to repeat the ques-
tion. He will read back my question that was not answered.

REPORTER: "My question to him is whether he is not
saying to Mr. Graupner that that is the only possibility."

MR REITER: (To Reporter) Was there an answer to that?

REPORTER: No.

MR OWEN: There was an answer. He said the law hadn't been in existence.

MR GALLESKI: He said the law did not exist.

MR OWEN: That answer was not responsive.

MR REITER: But he gave you an answer.

MR OWEN: (To Reporter) Could you read back his previous answer please?

REPORTER: "In 1962, the law -- according to which the German State might possibly compensate -- did not exist."

And the question was...

MR REITER: (To Reporter) Was there a question after that?

REPORTER: A comment, "It is not responsive." No question. Then you got into this argument.

MR REITER: (To Mr. Owen) There was no other question. Now ask your question. That's the way to handle it.

MR OWEN: That's the question I'm asking him to repeat.

MR REITER: But he answered it.

MR OWEN: He did not answer it. It was not a responsive answer.

MR REITER: But he made an answer.

MR OWEN: I would like to put again the one that he just answered.

MR REITER: So put it again.

MR OWEN: All right. Fine. That's what I was saying when I asked to put it again.

MR REITER: All right. Ask it again. That's what I want you to do.

MR OWEN: Would the reporter please read it to the interpreter?

MR REITER: No! I want you...

MR OWEN: I'm not going to rephrase it because I can't read his notes. It is idiotic for me to try to make it up again when he can read it from his own notes.

Why should I try to make it again?

MR REITER: Because there has been a response to that question and there is presently no question pending before the witness.

MR OWEN: All right.

Mr. Ellenbogen, would you please read me the language of my question so that I may copy it down and put it again.

MR REITER: All right.

MR OWEN: (To Reporter) I do not see why you are

not permitted to put it to the interpreter as my question; but, if that's the way Mr. Reiter wants to have the examination, he will have it that way.

MR REITER: The question has been answered. You characterized the answer as unresponsive. We disagree.

MR OWEN: (To Reporter) Mr. Ellenbogen, please read to me what I asked so I may be refreshed in my recollection.

REPORTER: "Aren't you saying that that is the only source of compensation?"

Q. Now, Mr. Schmieder, looking again at your letter, Exhibit CC -- beginning with the word *Demnach*, aren't you there saying that that is the only course of compensation?

MR REITER: I object to this on the same grounds that I have previously made. He has been hammering at this old man for a long long time. And I simply object to the way you're doing it.

Go ahead and answer it.

A. I would not like to have said it in this sense.

Q. What does that mean?

MR REITER: It is for him to know, and for us to try to find out.

(To Reporter) What was the question?

REPORTER: The question was, "What does that mean?"

MR OWEN: That's my question.

MR REITER: I object to that on the ground that it speaks for itself. How many times must he be asked to go over the same ground?

I don't think it is an appropriate question.

MR OWEN: Is that an answer to my question?

MR REITER: I'm not the one answering. I'm simply objecting.

MR OWEN: I'm asking, Mr. Reiter, if you would consider that that is a responsive answer to my question?

MR REITER: I'm not here to give you a legal opinion.

MR OWEN: Well then I'll put the question to him a third time.

MR REITER: A third time? It's more like six or eight times.

MR OWEN: I haven't gotten a responsive answer to the question.

MR REITER: I object to this whole procedure. He is giving you the best answer he can. He has given you the best answer he knew how apparently. And there is no reason for you to continue to ask the same question.

MR OWEN: No! I think this is perfectly...

MR REITER: Furthermore, I think there is possibly

an issue of privilege. I just don't think we're accomplishing anything by your badgering the witness.

MR OWEN: I don't think we're accomplishing anything by not permitting him to be directed to make a straightforward answer to a very simple question as to what is that language and what does it mean.

MR REITER: Are you saying that I am interfering somehow?

MR OWEN: I am saying that by not permitting me to put a responsive question and get a responsive answer on the third go around is, in some way, disruptive of my inquiry -- yes.

MR REITER: You are saying that I'm doing something that's inappropriate.

MR OWEN: I'm saying that your objection is not well taken, and that he should be permitted to answer and give me a responsive answer.

MR REITER: Have I ever objected to his answering any of these questions of yours?

MR OWEN: The record will speak for itself on that score.

MR REITER: I submit that I have not once said that he should not answer.

I have not terminated the questioning. And I have

never once said that he should not answer. I have simply objected.

MR OWEN: I will put the question one more time.

MR REITER: Thank goodness.

Q. Mr. Schmieder, looking at the language behind *Demnaah*, are you not there saying to Mr. Graupner that going to the Federal Republic is the only possible source of compensation?

A. This was not right to be decided -- not ready to be decided -- because the law was not made yet.

MR OWEN: All right. If that is his answer, that's his answer.

Q. Now, Mr. Schmieder, were you ever examined under oath by a Mr. Orenberger -- of the Munich American Consulate General's Office -- in connection with your claim with the Alien Property Office?

A. This may have to do with the 7th of January 1955. It may have to do with it. And I will check up on it.

Q. Was that the time that you recall being examined by a United States Official in the Munich American Consul General's Office?

MR REITER: I object on the ground that it hasn't been established that he was in fact so examined. There has not been a proper foundation laid for that question.

MR OWEN: I'm asking him if he recalls being examined then.

MR REITER: That wasn't the question as it was put to him.

Q. Mr. Schmieder, do you recall being examined in the Munich General Consul's Office?

A. He came to see me at Lörrach.

Q. This is the American Consulate Examiner?

A. Yes, certainly.

Q. When was that?

A. It may have been the 7th of June or the 7th of January 1955. I'll have to check up on that. You can find it in your file.

MR SCHMIEDER: (To Mr. Owen in English) Is it January? Or is it...?

(A document was handed to the witness.)

INTERPRETER: January -- yes.

MR OWEN: This is page 10 of Exhibit A/ For identification that the witness used to refresh his recollection.

Q. When you met with this gentleman in January of 1955, did you tell him about your experiences with this *Stahlhelm*?

A. No, unfortunately not.

Q. Did you tell him about your reference to Mr. Hitler as *Haile Selassie*?

A. No, I didn't go to such lengths. But I showed him this about Mr. Burkhardt and about the lady who took care of my house in Berlin.

MR OWEN: Let's mark this for identification as Exhibit DD?

(Marked by reporter.)

MR OWEN: (To Interpreter) What does this mean?

INTERPRETER: This is a notarized copy from Meerane on 17 January 1950 -- a sworn declaration.

MR OWEN: Would you read that?

INTERPRETER: "I am the Head of the City Construction Office and of the Construction Police of the City of Meerane, and I declare under oath..."

MR GALLESKI: In lieu of oath.

INTERPRETER: "...in lieu of oath that Mr. Kurt Schmieder in Meerane, Schwanefelder Strasse 6, has often used expressions in my office, and in my private office, and that he has often expressed himself dangerously against the former *Fuehrer* and his movement, so that I often had to warn him, and had to draw his attention to the possible consequences. That Mr. Schmieder, if he had used the same expressions in the inappropriate places would certainly have landed in a concentration camp, where... or from which, in view of the degree or gravity of the utterances made, he certainly would have not

come out alive."

Signed, "Arthur Burkhardt, Construction Engineer and Architect," and the address.

This was confirmed by a Notary Public.

Q. Now, Mr. Schmieder, you say you gave this to the Examining Officer -- Exhibit DD for identification.

A. It is very possible that I gave it to him.

MR OWEN: (To Mr. Reiter) I assume you are going to furnish me a copy of that.

(Mr. Owen and Mr. Reiter then conferred with each other.)

MR REITER: I want to put on the record a stipulation between counsel:

That the counsel stipulate that they will exchange copies of all exhibits marked in the course of today's deposition.

MR OWEN: Right.

Q. Did you, Mr. Schmieder, tell this interrogating officer that you referred to Hitler as *Mr. Hitler*?

A. That is possible.

Q. Did you tell him the names of any of these people that he could go talk to about your claimed anti-Nazi stand?

A. Hardly. That was a delicate thing to do. I could not go around accusing people without having anything solid

against them.

Q. But these were people who would support you?

MR REITER: Is this a question?

MR OWEN: Yes.

A. How do you mean that?

Q. These people -- whose names you gave at the end of your direct examination -- you were not accusing them; you were saying they would help you.

MR REITER: May I make this suggestion? Why don't you simply ask him whether he gave the names of these people he gave today to...

MR OWEN: He said he didn't. And he said he didn't because, "I didn't want to accuse anybody." If his answer had stopped with "no," I would have been perfectly happy.

MR REITER: I think he had the wrong people in mind. Maybe you should make sure. I don't think he referred to the names of the people he gave during his testimony today. I think you would get a better answer that way.

Q. Incidentally, Mr. Schmieder, the *Stahlhelm* itself was not a persecuted organization, was it?

MR REITER: I object. I object on the ground that you are asking him for a conclusion. He is no expert on persecuted organizations. And "persecuted organizations" in what respect? There are so many different types of persecuted

organizations. I didn't know that there was any general list of a particular persecuted type of organization.

Q. Mr. Schmieder, did you say in an affidavit that you swore to on...

MR OWEN: Well, to save time, will you stipulate Mr. Reiter that this is a true copy of Mr. Schmieder's affidavit of November 8, 1971? You can look over my shoulder at it. It will save us a lot of time.

MR REITER: All right. Go ahead.

MR OWEN: It is stipulated that the affidavit of November 8, 1971 -- of Kurt Schmieder -- is a true and genuine affidavit as filed by Mr. Galleski as part of the proceedings in the...

MR GALLESKI: As it is in the court file.

MR OWEN: Fine.

Q. Now, Mr. Schmieder, at page 3 of that affidavit, in German it reads: *Die rechtliche Erheblichkeit meiner Zugehörigkeit zu einer verfolgten politischen Gruppe...* Now, was that political group that you were there referring to the *Stahlhelm*?

A. When was it written?

Q. This was written in November of 1971.

A. It also refers to the *Stahlhelm*. But I did not know that at the time. I should have drawn Mr. Sommerich's

attention to it. He didn't know it either.

Q. Isn't it a fact that -- I believe you testified to this earlier, to lay a foundation -- that the *Stahlhelm* was incorporated into the SA?

A. Yes.

Q. And didn't the *Stahlhelm* continue throughout World War II as part of the SA?

A. No.

Q. When it was incorporated into the SA, what happened to the organization?

A. It just burned to ashes.

INTERPRETER: It turned to ashes.

A. (Continued) It is possible, however, that a few of the old members of the *Stahlhelm* were considered -- or considered themselves -- to be an underground movement which, of course, was illegal.

Q. Well, is it fair to say that when *Stahlhelm* was taken over by the SA, it ceased to exist?

A. Yes. It should have really ceased to exist.

MRGALLESKI: It was ordered to cease.

A. (Continued) It was ordered to cease. But with the exception that a few of the old timers of the *Stahlhelm* continued to work as an underground movement.

Q. Now in terms of your relations with those of Jewish

blood, you say that you continued business relations with Jews until the year 1938?

A. Yes, in Germany.

Q. And did you stop having relations...?

A. But in the whole of the Balkans or Balkan States, I had Jewish representatives all through the war under a cover address -- in Greece, Rumania, Yugoslavia; in all those robber's nests.

Q. Did you tell this to the American Consular Official who interrogated you in Lörrach in 1955?

A. Yes.

Q. Now did you stop having relations with Jewish people in Germany after 1938?

A. Well hardly, because there weren't any left. It stopped being possible to have trade in 1938.

Q. Did you tell this to the American Consular Official that interrogated you in Lörrach in 1955?

A. It is possible.

MR OWEN: (To Reporter) Would you mark this Exhibit EE for identification please?

(Marked by reporter.)

Q. Mr. Schmieder, I show you Exhibit EE for identification and ask you if you received a copy of that paper?

A. This was by way of an answer that my claim was

dismissed.

Q. Mr. Schmieder, turning to a completely different subject...

MR GALLESKI: Please allow me to state that 15 minutes ago the interpreter and the reporter expressed that they are tired. And I would say -- and believe -- that since we still have redirect, that it's getting too much for today -- that we should adjourn until tomorrow morning.

MR OWEN: Well just a few minutes ago, I suggested to Bob that I could finish in about 35 to 40 minutes.

MR GALLESKI: Well that is quite a lot. It is almost three and a half hours that we have been in session, and that is a long time -- even for a juvenile witness.

MR OWEN: All right.

MR REITER: We'll meet again at 10 o'clock tomorrow morning then.

MR OWEN: Fine.

(The proceeding adjourned Wednesday, 1900 hours, 5 September 1973.)

(The proceeding reconvened Thursday, 1000 hours, 6 September 1973.)

MR REITER: All parties present when we recessed yesterday are again present.

MR OWEN: I was told the last answer of yesterday

was subject to some dispute.

MR MEDVERD: How about the question? Was that in dispute?

MR OWEN: No, the question was not in dispute.

MR REITER: We'll go ahead.

CROSS EXAMINATION CONTINUED

BY MR OWEN:

Q. Mr. Schmieder, I ask you to look at Defendant's Exhibit EE for identification and ask you if you received a copy of that?

MR REITER: Let me object. I believe this has been previously asked of this witness.

A. I don't know of having received one.

Q. Mr. Schmieder, were you told by anyone that your claim had been turned down?

MR REITER: Objection. Hearsay.

MR OWEN: All right. Let him answer it.

MR REITER: Or, if he was told by someone who it is asserted by the witness was supposed to have occupied a position of an attorney to client, then it would be a violation of privilege. And I object.

A. Katz and Sommerich wrote to me about it.

Q. Mr. Schmieder, I show you again Defendant's Exhibit AA for identification and direct your attention to page 9 -- to

the language in paragraph d on page 9.

Would you read that please and I'll put a question to you after you have read it?

MR OWEN: (To Mr. Reiter) May I say that if you want to read the entire thing, you are at liberty to do so.

(Mr. Reiter, Mr. Gallecki and the witness examined the exhibit.)

MR OWEN: I would like to have the record show that all counsel and the client for the plaintiff have read the entire exhibit, and that counsel have conferred upon it with their client. I made the offer to read it, and I have no objection to your taking advantage of it.

I would like to go forward with a very limited inquiry. And if you have any inquiry with regard to this exhibit, of course, you are privileged to do so on redirect.

But, at this moment, Mr. Gallecki is conferring with the witness with regard to the exhibit which I regard as wholly improper at this point.

Mr. Gallecki, would you kindly stop, sir, while the record is being made? This exhibit was not given to you so that you could have a five-minute conference with the witness. This was given to the witness as the basis for a question. It was not given to you for you to have a conference with him and to give instructions to him.

I don't know what you are saying to him in German, but I regard it as improper -- while a question is pending -- for you to be conferring with him and advising him.

MR REITER: Mr. Owen, in response, let me suggest that it was at your suggestion that we are reviewing this entire document, which we have not seen before. And we do have all day today. We decided to stay overnight for the purpose of allowing this matter to be gone into in detail.

MR OWEN: Well that's why I respectfully suggested a minute ago that you having looked at it in its entirety, fine -- but on what ever you want to do with it, hold it for redirect. I have a question pending. This is not a time for a conference with your client over that exhibit.

MR REITER: Mr. Owen...

MR OWEN: That you can do on redirect.

MR REITER: Mr. Owen, this is an exhibit that is written entirely in the English language. There has been no translation provided. You are asking this man for an answer to something that is on a piece of paper that is in English.

MR OWEN: I propose to have it translated to him because we have a translator here.

MR REITER: But you haven't... You haven't... This is the first time I've heard that.

MR OWEN: All right.

Mr REITER: We are simply trying to save time -- in order to just go over it ourselves for purposes of any other questions which you might be putting to the witness -- so that we will be at least acquainted with what this document is.

This is the first time we have had an opportunity to go over the whole thing. You proffered it...

MR OWEN: I have no objection to your looking at it. I have objection to Mr. Gallecki conferring with the witness about the exhibit while there is a question pending.

MR GALLESKI: What is pending?

MR OWEN: I asked him to look at it so that I could put a question to him.

MR GALLESKI: So what is pending?

MR OWEN: A question is pending.

MR GALLESKI: What?

MR MEDVERD: What question is pending?

MR OWEN: He's to look at it; and when he has looked at it, I'll put a question to him. It was not to have counsel for the witness at that point begin to give him instructions with regard to what has been read.

MR GALLESKI: So no question is pending now. He shall only look at it. And he cannot look at all...

MR OWEN: All right, Mr. Gallecki -- let me put my next question then.

MR GALLESKI: He cannot look at all this English stuff here.

MR OWEN: I will put my next question.

MR REITER: Let me suggest this, Mr. Owen: If you prefer to do it this way, you have this entire document translated or interpreted to the witness.

MR OWEN: I am going to ask the witness one question based upon certain language here. And if upon the trial of this action you feel that this has been improperly put, you have your objection to judge now.

Q. Now first, Mr. Schmieder, showing you page number 9, paragraph d, do you, sir, understand that paragraph in English there?

MR REITER: I object on the ground that he is showing him one portion of a very lengthy document without his being able to have had an opportunity -- as was proffered by counsel for the defense -- to read the entire document, to know what it means. And it is inappropriate to ask him something under these circumstances -- when it is not even in the German language.

This is simply just not the way an examination of this kind is conducted.

We're over here to...

MR OWEN: I respectfully disagree.

May I...? You have your objection now. May I go forward with my question?

If I'm wrong, I'm wrong. If you're right, you're right.

We'll get a ruling when the time comes.

(To Interpreter) Please ask my question.

(The interpreter then spoke to the witness.)

A. I don't know what to make of it.

MR OWEN: All right.

Then I will ask Mrs. Toepfer if she will kindly read to you paragraph d of page 9 in German.

MR REITER: If you want that whole thing read, it is going to take her an hour to read that whole thing. You know that.

MR OWEN: Is that on the record?

MR REITER: No, this is off the record.

MR OWEN: Mr. Ellenbogen, I want all of this on the record. Mr. Reiter says if we want this all in German, it is going to take us an hour to read the whole thing.

MR REITER: May I talk to you?

MR OWEN: All right.

(A conference was held between counsel for both sides.)

MR REITER: I understand, after a conference between

Mr. Owen and myself, that Mr. Owen intends to ask only one question -- and that is whether or not there was ever any discussion by anyone with him relating to the subject matter of this paragraph d.

Under the circumstances, in order to avoid all the time that would be involved in translating this extremely lengthy document into German, I would interpose no objection on that score. Of course, I would retain any objection which I would have interposed on the grounds of privilege and hearsay.

But, I would permit this question simply to be asked for the record -- without going into any lengthy procedure -- if it can be made perfectly clear to Mr. Schmieder, who has not read this document, that the subject matter of this claim -- which is involved in this document -- is not the property involved in the present suit, but the other third of the property which was retained in his name in New York.

MR OWEN: I'm prepared to stipulate with you that this claim -- in which this statement is made -- involves the quote *other third* unquote as we have characterized it.

And, I take it, that's what you want as a stipulation; right?

MR REITER: No, not as a stipulation. But that Mr. Schmieder be told this by the interpreter in German.

MR OWEN: Well, I assume that that is a stipulated fact; otherwise, there is no basis for telling Mr. Schmieder.

MR REITER: That's correct.

MR GALLESKI: But he doesn't know.

MR OWEN: So all right, we'll stipulate to that as a fact, and you may inform Mr. Schmieder that that has to do with the other third.

(Mr. Galleski then spoke to the witness.)

Q. Mr. Schmieder, I will have read to you now in German, by Mrs. Toepfer, the interpreter, paragraph d of page 9 of Exhibit AA for identification, which in English states as follows: "To the best of my knowledge and belief, the property claimed was not at any time after September 1, 1939, held or used pursuant to any arrangement to conceal any interest of an enemy of the United States."

MR REITER: I think you had better repeat your question now.

MR OWEN: Now, Mr. Schmieder, do you understand the German that was just read to you?

INTERPRETER: He said, "I don't quite understand it."

I propose to put it into two sentences because in German it gets involved.

MR OWEN: All right.

(The interpreter then speaks to the witness.)

A. I was not an enemy of the United States.

Q. The question is: Do you understand that clause as read to you in German?

A. Not quite. I have never seen that before.

MR OWEN: (To Reporter) Would you please mark this Exhibit AA-1 for identification?

(Marked by reporter.)

Q. Mr. Schmieder, I show you Exhibit AA-1 for identification which Mrs. Toepfer has made -- which is a translation which Mrs. Toepfer has made -- of paragraph d on page 9 of Exhibit AA.

Would you now kindly read that?

It states: *Nach meinem besten Wissen und Glauben wurde der beanspruchte Besitz nach dem 1. September 1939 zu keinem Zeitpunkt aufgrund irgendeiner Abmachung dazu gebraucht um irgendwelche Interessen eines Feindes der Vereinigten Staaten zu verschleiern.*

A. I have difficulties in understanding it.

Q. What do you not understand?

A. You mean to say what has been claimed later and what has been stated later?

Q. Mr. Schmieder, do you understand that language, in substance, to be a representation that the property claimed

was not used or held pursuant to an arrangement to conceal it?

MR REITER: I object to that question because it is an attempt to characterize what is some very legalistic English language, which the interpreter -- to the best of her ability -- has attempted to set over in German, and which apparently the witness doesn't understand.

And I don't believe -- since the question before the witness is related specifically to this language which we're dealing with -- that the attempt on the part of counsel to characterize it, and ask if he understands that, is material or relevant to what he is asking. Because what he is asking is based entirely on the specific language given in this form here.

MR OWEN: Mr. Reiter, I am trying to take the clause in two pieces, and I am asking about the first half of the clause.

Are you now saying that I may not examine in that fashion?

MR REITER: I'm going to allow you to ask the question, but I am certainly going to object to your breaking it down -- or to your making any attempt to vary it whatever -- from the terms of this particular statement.

I would say that the way to get around it would be to ask him a direct question, rather than asking him to

indicate whether he understands a particular bit of legal language which he has specifically said he has never seen before.

I think it is an exercise in futility.

MR OWEN: Whether he has seen it before or not really isn't the question.

(To Interpreter) Could we have the question put back since Mr. Peiter says he has no objection to my putting the question to the witness.

MR REITER: No. I object to the question.

But you can put it.

MR OWEN: (To Interpreter) Put it again please.

INTERPRETER: (To Reporter) Would you read it back to me please? -- the question before.

MR OWEN: (To Reporter) Please put my last question to him.

MR REITER: There is a question...

MR OWEN: No. You have objected. I want to have it read to him exactly as I said it so he knows what it is he is answering.

(To Reporter) Go ahead please.

REPORTER: "Mr. Schmieder, do you understand that language, in substance, to be a representation that the property claimed was not used or held pursuant to an arrange-

ment to conceal it?"

MR REITER: Let me reiterate my objection.

(The interpreter then spoke to the witness.)

A. The part -- about the part -- to conceal any interest of an enemy of the United States, I want to say that it was expressly explained which part was claimed.

I simply don't understand what interest of what enemy of the United States I was supposed to have concealed.

Q. Mr. Schmieder, do you understand that that language, in substance, is a representation that you did not conceal?

MR REITER: I object to the question on the ground that it is exactly the same question in even more simplified form, and even more confusing form insofar as it relates to the specific language of the paragraph with which we are dealing now, and is getting further and further away from the question which was originally stated -- namely, relating to whether there were any discussions with respect to this paragraph, which was the stipulation -- that it was the only question which was going to be asked: whether there were any discussions relating to that paragraph.

We're far afield now. We're now departing from the stipulation.

The stipulation has been violated immediately.

MR OWEN: Mr. Reiter, until the witness acknowledges that he understands what the paragraph means, I am unable to ask him whether there has been any discussion. We have yet to establish that he understands what the paragraph means. It is that I am endeavoring to do.

MR REITER: I dissent on the ground that we have agreed that the question be whether there was any discussion regarding that paragraph.

MR OWEN: But I haven't established he knows what the paragraph means. So how can he say he has had a discussion about something he says he doesn't know what it means.

MR REITER: If he doesn't know what it means, that doesn't interfere with his responding to the question as to whether there has been any discussion regarding that particular paragraph.

We're going far afield now in asking him whether he understands that paragraph. Whether he understands it or not, there could or could not have been discussions with someone or anyone regarding that paragraph.

You are now going beyond what we stipulated.

MR OWEN: Mr. Reiter, if he doesn't understand the paragraph, I don't see how he can say he had any discussions regarding it.

MR REITER: But if he doesn't understand, he didn't

understand it any other time. It is that paragraph itself that has to speak for itself. And whether he had any discussions regarding that paragraph is irrespective of whether or not he understands the paragraph.

And that's exactly the point.

It is that paragraph that we are concerned with, not the subject matter of any possible arrangement to conceal -- which he has said he doesn't.... he has never seen. And if he has never seen it, then in any event he could never have discussed it with anybody.

MR OWEN: (To Interpreter) Mrs. Toepfer, would you please ask Mr. Schmieder what is it about the language of Defendant's Exhibit AA-1 for identification that he does not understand?

MR REITER: I object to that question on the ground that it has been put to him, and he has broken it down in two parts, and said why he doesn't understand it; and this is an...

MR OWEN: No he hasn't.

MR REITER: ...this is simply repetition. And, as I recall, the previous question was divided into two parts by Mrs. Toepfer -- it was broken down into two parts in his answer -- and it was very clearly stated as to what his misunderstanding was, and what his basis for not understanding

was. And again I object. We've gone beyond our stipulation. The stipulation has been violated.

MR OWEN: It has not been violated.

If you now want to take an hour to translate the entire document, you go right ahead.

MR REITER: I don't need...

MR OWEN: I am going to patiently endeavor -- for as long as I deem necessary -- to determine, as a foundation, for the one question that I... the one simple question that I want to ask, whether Mr. Schmieder understands the German language that has been translated for him which is embodied in Exhibit AA-1. If he says that he does not know what that language means, that is one thing; if he says he does know what that language means, I then wish to ask him the one question that we earlier discussed.

And I'm going to keep at it patiently, sir, until I get an answer.

MR REITER: I recommend that you ask him then that question: whether he knows what that language means.

MR OWEN: I have been trying to do that, and I get answers that do not come to grips with my question.

MR REITER: Then ask the question directly.

Q. Mr. Schmieder, do you know what that language means in Exhibit AA-1 for identification?

A. No, I don't understand it.

Q. What don't you understand about it?

MR REITER: I object to this. We've gone beyond our stipulation again.

He has given you a direct answer. He doesn't understand it. What else can you get after all this time?

I object to this continuing harassment of the witness.

MR OWEN: I am not harassing him. I'm asking him what he doesn't understand.

Q. Mr. Schmieder, what do you not understand?

A. I do not understand -- and this is the way I interpret it -- I do not understand why I should have tried to conceal the interest of an enemy of the United States. I didn't want to conceal anything. And I do not know what the sense of it all is.

MR OWEN: (To Interpreter) Would you translate for him the German which means "the property claimed"?

MR REITER: I object to this. Again you're picking out a small portion of it and this is not the way to do it.

MR OWEN: Would you tell me how I may do it then please? -- if you're going to object to this.

MR REITER: You've done it the best way you could.

MR OWEN: No, I hav en't.

MR REITER: You've had it translated into German. You've asked him every which way. You've asked him all kinds of things. It is clear he does not understand the significance of it.

Now how many times must we go through this?

MR OWEN: I'm going to break it down.

MR REITER: I won't object, but...

MR OWEN: All right, then don't object.

Let me put my question please.

MR REITER: I won't object to your doing it, but I object to the fact that it is being done this way. And I will renew my objection after every question you ask.

You've beat this thing into the ground. You've tried your best to elicit something out of nothing.

And I'm not surprised that he doesn't understand it. I even... Even I -- and I'm familiar with the Trading With The Enemy Act -- have had some difficulty in advising clients on this type of thing. It is a very difficult legal concept -- a written arrangement to conceal. I can't believe that many American laymen would understand it either.

Go ahead and ask your question.

MR OWEN: Thank you.

(To Interpreter) Would you tell me what the words in German are for "the property claimed"?

INTERPRETER: This means *der beanspruchte Besitz*.

MR OWEN: Thank you.

Q. Mr. Schmieder, do you know what the language *der beanspruchte Besitz* means?

A. This is what had been confiscated.

MR GALLESKI: *Oder -- Oder --* he said.

INTERPRETER: *Bitte!*

MR GALLESKI: He said *Oder*.

INTERPRETER: "Isn't it?" "This is what has been confiscated, isn't it?"

MR OWEN: All right.

(To Interpreter) Now the language goes "was not at any time after September 1, 1939..."

REPORTER: What?

I'm sorry. I didn't...?

MR REITER: What's the question?

MR OWEN: First I have to get what the German is.

MR REITER: Well ask your question.

MR OWEN: First I have to learn what the German is so that I can see what language I'm directing the witness to.

INTERPRETER: Now we're getting into bad German.

MR REITER: Mrs. Toepfer, allow Mr. Owen to ask the question.

MR OWEN: All right.

First I'm asking Mrs. Toepfer to provide me with the German equivalent of the language "was not at any time after September 1, 1939."

MR REITER: I object.

This has all been put down in written form by Mrs. Toepfer. How could she do any better?

MR OWEN: I want her to direct my attention to it in Exhibit AA-1 so that I may question from it.

INTERPRETER: ...zu keinem Zeitpunkt nach dem ersten September neunzehnhundert neun und dreissig...

Q. Now, Mr. Schmieder, do you know -- or do you understand -- the meaning of the language *zu keinem Zeitpunkt nach dem ersten September neunzehnhundert neun und dreissig...*?

A. No, I don't understand it all. Really not. What is the first of September supposed to mean?

Q. So you understand what the words "first of September" mean?

MR REITER: Wait a minute!

Is that a question?

MR OWEN: Yes.

(The interpreter then spoke to the witness.)

A. No.

MR REITER: Let me note a continuing objection to this whole rigmarole.

MR OWEN: May I say -- for the record -- that since the witness said he doesn't know what the "first of September 1939" means, I am going to abandon this particular inquiry, being unable to proceed further.

Q. Mr. Schmieder, you have a son named Rolf, do you not?

A. Yes.

Q. Did there come a time where you met with your son Rolf while you were in the Zwickau Prison?

A. Yes.

Q. What was the date of that meeting please?

A. I don't remember that.

Q. What did you and your son Rolf speak about on that meeting?

A. Not too much, because we were being observed by the Bolshevik Guardians -- guards.

Q. Mr. Schmieder, I show you what has been marked Exhibit G on your examination of February 9, 1970, and ask you if your memory... if you remember that statement?

A. Yes.

Q. Now, when you met with your son Rolf in Zwickau, did you tell him that you had executed this document Exhibit G of February 1970?

A. Mr. Linder was with me.

Q. Now did you tell Rolf...

The question is: Did you tell your son Rolf in Zwickau about that?

A. My son, of course, has seen the document.

Q. Did you and your son discuss Exhibit G?

A. Yes.

Q. Did you tell him to submit a copy of that exhibit to the United States authorities?

A. I didn't tell him to do so, but in all probability he did it.

Q. Now did you discuss with him any claimed agreement between an American lawyer and yourself concerning the properties received by Mrs. Dwyer?

MR REITER: I object on the ground that I don't understand what a "claimed agreement" is, and I'm sure that he doesn't.

MR OWEN: Let him try to answer it, if he can.

If he can't answer it, he can say so.

A. No.

MR OWEN: (To Reporter) Would you mark this Exhibit FF for identification?

(Marked by reporter.)

Q. Mr. Schmieder, I believe you said yesterday that you recognized the signature of your son Rolf.

I show you what is marked Exhibit FF for identification and ask you if you recognize the signature of your son Rolf on the first three pages of that exhibit?

A. Let me first see what it deals with.

Q. May I ask you first, Mr. Schmieder: Would you please just tell me whether or not it bears your son's signature?

MR OWEN: This is a very limited question.

(Mr. Galleski took the exhibit from the witness.)

MR OWEN: Mr. Galleski, would you give the witness the exhibit, please?

MR GALLESKI: First I must familiarize counsel with it.

MR OWEN: No. I handed the exhibit to the witness to ask him if it bears his son's signature.

Would you please let him look at it to tell me if it bears his son's signature?

That's the only question.

MR REITER: I object to this procedure because counsel has not had an opportunity to examine this in any respect, and indicates that this not the appropriate way to do this.

And I object to this whole manner of asking questions.

Q. May I know, Mr. Schmieder, if that is your son's signature?

A. Yes, that is his signature.

Q. Now, Mr. Schmieder, did there come a time where your son Rolf told you that he had given an interview to United States authorities?

MR REITER: I object on the ground of hearsay. No foundation for the fact that there was even an interview given.

We haven't had a chance to see this document, what it involves. And I make a general objection on this basis.

MR OWEN: (To Interpreter) May I have an answer to my question.

(The interpreter then spoke to the witness.)

A. This is the 7th of February 1940. Then it possibly and ostensibly was in Berlin.

Q. Herr Schmieder, I show you page 3 (indicating) with the date 1949.

A. (In English) This 1949, yes. I was in prison at the time here.

MR REITER: (To Witness) Do it properly please.

MR OWEN: He took my question in English and he answered it in English.

Mr. Ellenbogen, may the record show that I put the question in English and the witness immediately answered in

English without the interposition of a translation.

Q. Now, following this 1949 interview of your son Rolf in Berlin, did Rolf tell you that he had been interviewed in Berlin?

MR REITER: I object on the ground of hearsay and on the ground that it has not been established that there was in fact any interview in Berlin. No foundation.

A. I do not remember that. I do not remember it. I was informed about it later on. But I didn't know it while I was in prison.

And, in addition, after 1949 my son fled to the West and he was no longer in the Soviet Occupied Territory.

Q. Now, Mr. Schmieder, you said that you were informed about this Berlin interview later on and I ask you who informed you?

MR REITER: I object on the ground of hearsay and on the ground of privilege.

MR OWEN: (To Interpreter) Let him answer it.

(The interpreter then spoke to the witness.)

A. I don't remember whether there existed a copy of that. It is possible.

Q. Mr. Schmieder, would you know where the copy of this interview is today?

MR REITER: I object on the ground that it hasn't

been established that there is a copy.

A. I don't know that.

Q. Did you after 7 February 1949 talk to your son Rolf about his interview?

MR REITER: Continue the objection on the ground of hearsay.

A. I really couldn't tell you exactly now, for any conversation in prison was dangerous -- really.

Q. Did you talk to Rolf when you got out of prison about his interview?

MR REITER: Same objection.

A. The person who was particularly against this interview was Mr. Graupner. He also wrote about it saying that he was not pleased about the interview, because Rolf was much too young to know what was going on.

MR OWEN: I move to strike that answer and ask the question again, which was:

Q. After you got out of Zwickau Prison, did you talk to Rolf about this interview?

A. You mean about this questioning?

Q. Yes -- referring to Exhibit FF for identification.

MR REITER: Same objection.

MR OWEN: (To Interpreter) Please translate his answer.

A. Yes, but we did not accord it much attention any longer. The interview is a much jumbled-up affair. They talk, for instance, about this one-third for myself, and the two-thirds for Mrs. Dwyer. And, as Mr. Graupner said, the interview should not have taken place because Rolf was much too young.

Q. How old was Rolf in 1949, Mr. Schmieder?

MR OWEN: I think it says here 24 years old.

MR GALLESKI: The document says 24.

A. When he was being examined, he was 24. But what happened? -- the circumstances he was describing? -- at that time, he was much younger -- too young for it.

Q. But when he spoke with you in Zwickau, he was also 23 or 24, was he not?

A. Yes.

Q. And what you told him in Zwickau, he told the American authorities?

MR REITER: Objection on the ground that it hasn't been established that he knows what his son told the American authorities. In any event, it would be hearsay, and this man would have no way of knowing -- based upon the record as it is now established -- what his son told the authorities in Zwickau.

Q. Mr. Schmieder, after you got out of Zwickau, did

you talk with Rolf Schmieder?

A. Not immediately.

Q. But did you at some time?

A. Yes, I did -- later on. But what was I going to talk to him about? He did not know about the very early events.

Q. Mr. Schmieder, did you ever tell Rolf Schmieder that if you were to die Mrs. Dwyer was to give the property to him?

MR REITER: I object to that question on the ground that there is no foundation for that kind of a question. There is no indication that that was said anywhere.

MR OWEN: I'm asking him whether it ever was said.

A. It was intended to go not only to my son, but also to my daughter.

Q. Did you tell your son that?

A. Yes, he knew that he was supposed to get half of it.

Q. When did you tell him that?

MR REITER: I object on the ground that it hasn't been established that Mr. Schmieder told him. The testimony was that he knew it.

MR OWEN: Well how did he know it?

MR REITER: Presumably because it is a matter of law.

MR OWEN: (To Interpreter) How did he know it?

Q. Mr. Schmieder, how did he know it?

A. I had agreed... made an agreement on that with Mr. Graupner shortly before the war.

Q. Did you ever tell your son Rolf of this agreement?

A. The agreement was to the effect that Mr. Graupner should cause Mr. Hall, Sr., to draw up a re-insurance statement.

Q. Did you ever tell this to Rolf?

A. Yes.

Q. When did you tell Rolf this agreement?

A. I do not remember that.

Q. Was it in 1938?

A. Yes, of course -- approximately, yes.

Yes, about that period of time.

Q. Mr. Schmieder, I show you Exhibit G under date of February 9, 1970, and ask you to read that as the basis for a question.

(The witness examined the document.)

Now your counsel, Mr. Galleski, on the 10th of October, 1972, has stated in an affidavit as follows:

"Plaintiff was correct in stating that the transfer was absolute, irrevocable and without any obligation of Mrs. Dwyer in the legal sense."

Now, did you authorize your attorney to make that statement in that affidavit?

MR REITER: I object on the ground that this is a subject of a confidential communication between attorney and client.

MR OWEN: This was revealed and published to the court in a court record.

MR REITER: It is one thing if it is something that is published in a court. It's another thing to ask a client whether he has authorized his attorney to do something.

MR OWEN: I am asking whether he authorized Mr. Galleski to publish that statement to a Judge of the United States District Court for the Southern District of New York.

MR REITER: (To Mr. Owen) Would you repeat the question?

Q. Mr. Schrieder, did you authorize Mr. Galleski to publish that statement to a Judge of the United States District Court for the Southern District of New York?

MR REITER: Let me object also on the ground that there is no foundation that the client ever knew anything about what his attorney did in this case.

MR OWEN: I am asking him whether he did or not.

MR REITER: Furthermore, this is not even a full sentence that you are quoting. It is taken out of context.

If you want to have an opinion on it, you should let him see the whole thing and let him know the context of it. You have picked out simply a portion of one sentence and asked him based upon that fact. And it is a truncated portion to give an opinion on.

MR CALLESKI: And it is a legal opinion.

MR REITER: Furthermore, it seems to me that the portion that has been pointed out there is simply a legal opinion. And, therefore, what would the client have to do with that?

MR OWEN: The Plaintiff stated that the transfer was -- and the Plaintiff stated it in Exhibit G -- he stated that it was his statement, not Mr. Calleski's statement.

MR REITER: I object on the grounds that I have stated.

MR OWEN: I want my question answered.

MR REITER: I don't think the question should be asked. And it shouldn't be asked in this way in any event.

MR OWEN: I want the answer to my question.

If it is improper, we can get a ruling.

MR REITER: My client hasn't seen this. He has only been given one little bit of it. How can he answer this question?

MR OWEN: I'm asking him.

MR REITER: Well I don't...

MR OWEN: If he can't answer it, let him say so.

(The interpreter then spoke to the witness.)

A. Mr. Galleski, after all, had all the files and he could do with them as he pleased.

Q. Was he authorized to make the statement: "Plaintiff was correct in stating that the transfer was absolute, irrevocable and without any obligation of Mrs. Dwyer in the legal sense."

MR REITER: I object to this on the ground that he has already given his response that Mr. Galleski had the files, and as the attorney he could do what he pleased. It was up to Mr. Galleski to exercise his best judgment.

This is exactly the same thing that was posed before. We're getting nowhere on this. Mr. Galleski was the attorney.

MR OWEN: (To Interpreter) Could I have an answer please?

(The interpreter then spoke to the witness.)

A. I do not know. Mr. Galleski did that.

Q. Mr. Schmieder, I show you your affidavit of November 8, 1971, and direct your attention to paragraph 3 of that affidavit, and ask you first to read it.

MR REITER: Is there an English translation of this

that I can read? And, if so, may I see it?

MR OWEN: I am sure Mr. Gallecki would have it also since he furnished me with a copy.

MR REITER: I would like to see it if you are going to utilize it.

MR GALLECKI: It's in English.

(A document was shown to Mr. Reiter.)

Q. Mr. Schmieder, you say in this affidavit of November 8, 1971 -- do you not? -- "I was convinced that the legal conclusions set forth in the said document were correct"?

MR REITER: I would like to note my objection.

(The interpreter then spoke to the witness.)

MR REITER: Just a moment please.

The document speaks for itself. I can't see what can be added to the language that is being shown to the witness. First of all it has been characterized. The language speaks for itself, and it is the best evidence of what was said.

MR OWEN: Let me ask this: Will it be stipulated that this is Mr. Schmieder's language, and that he stands behind it? And may it further be stipulated -- assuming it's true -- that the translation into English, which is part of those motion papers, was made by Mr. Gallecki?

MR REITER: Let me say that I haven't read it.

MR OWEN: Well...

MR REITER: It has been a long time ago that this happened.

MR OWEN: Would you ask Mr. Galleski?

MR REITER: I think you had just better continue because I can't give you a stipulation on that.

MR OWEN: Then I'll have to go around it the long way.

MR REITER: Go ahead. You must do that. The question is as to how you should do it. And you should do it the proper way.

MR OWEN: I thought I would save time.

Q. Herr Schmieder, did Herr Galleski prepare the affidavit of November 8, 1971?

A. Yes. I suppose so, yes.

MR OWEN: Mr. Galleski, would you feel it improper if I asked you whether that was the fact as the counsel of record?

MR REITER: We have only one witness whose deposition is being taken.

MR OWEN: I am assuming that counsel is here, and he's an honorable member of the Southern District Court, and I'm just asking him whether he would acknowledge that he prepared it. If he didn't prepare it, he can say so. If he did

prepare it, let him say so. If he does not want to answer that one way or another, I will accept that answer.

But I'm just asking whether, as a member of the Bar of the Southern District, he prepared this affidavit.

MR REITER: Mr. Owen, let me say that we specifically asked for authority to take additional depositions which you vigorously opposed, which was denied, and we are limited to taking the testimony of only one man here -- Mr. Schmieder. And this is the way it has to be under the Order of the Court.

MR OWEN: No, that's not... I'm just inquiring whether or not Mr. Galleski is willing to acknowledge that he prepared this.

MR REITER: I think it's in violation of the terms of the Court Order.

You can proceed, Mr. Owen.

MR OWEN: May the record show that Mr. Galleski declines to answer whether or not he prepared this affidavit.

MR REITER: I deny that that should appear.

MR OWEN: I am demanding that it appear.

MR REITER: Mr. Owen can make any statement he wants for the record, but I will stand by the statement that I have made before.

MR OWEN: Fine.

May I also ask Mr. Galleski, as counsel of record here, whether or not he made or caused to be made the translation of Mr. Schmieder's affidavit?

MR REITER: My response is exactly as it was before. Mr. Galleski is not being deposed today. We are...

MR OWEN: I'm aware of that.

MR REITER: We are specifically prohibited from taking the deposition or the testimony of any other person in this proceeding on the ground that there was an objection and opposition made by Mr. Owen to our doing so. And we should not depart from the Court Order.

This is not the time to enter into broad stipulations. We are not prepared to do that.

Mr. Owen should proceed with his questioning.

MR OWEN: May the record show that I have asked Mr. Galleski, as a member of the Bar, if he would answer that question. And the response from Mr. Reiter is in the negative.

Q. Mr. Schmieder, did you have anything to do with the translation of this affidavit into English?

A. No. I did not have it translated.

Q. Mr. Schmieder, do you remember signing the affidavit of November 8, 1971?

A. Yes. It happened at the Consulate in Zurich.

Q. Was Mr. Galleski with you when it was signed?

A. He was also at the Consulate.

Q. Did he present to you the affidavit for signature?

MR REITER: I object on the ground that we're talking now or coming into the terms of an attorney-client privilege. The privilege relates not only to actual verbal communications, but to the transfer of documents, and things such as that.

And I don't want the reason for this question having been asked to open the door to Mr. Owen's going into the question of the communications between attorney and client. I think it is an inappropriate question. And I object to it.

MR OWEN: I'll ask it another way.

Q. Mr. Schmieder, did you read your affidavit of November 8, 1971, before you signed it?

A. Yes.

Q. Was it your understanding that this affidavit would be presented to a judge in the United States Court for the Southern District of New York?

MR REITER: I object on the ground that his understanding has to be based on advice received in some manner.

There's no proper foundation laid and we're getting into the area of attorney-client relations.

MR OWEN: (To Interpreter) May I have an answer to my question, please?

(The interpreter then spoke to the witness.)

A. Well, it could be assumed at the time. But, of course, it was up to Mr. Galleski to decide what to show and what not to show.

Q. Now, here in this affidavit -- in paragraph 3 -- it reads: *Die Urkunde hatte nichts mit moralischen Erwartungen zu tun.*

Mr. Schmieder, do you understand that language?

MR REITER: I am going to renew the previous objections that I made to the questioning based on this document here.

MR OWEN: (To Interpreter) May we have an answer please?

(The interpreter then spoke to the witness.)

A. I do not know. I do not really know what is meant by it.

Q. What do you not understand?

MR REITER: I object on the ground that this is a sentence being taken out of context. As a result, I'm not surprised that he doesn't know.

MR OWEN: I am surprised at your objection. This is an affidavit that the witness made in 1971. And I am asking

if he understands what it means. If he says he doesn't understand, then I want...

MR REITER: It is a sentence out of context. You can ask him about...

MR OWEN: He read the entire paragraph 3 at my direction. He read paragraph 3 two times at my direction.

MR REITER: I am not aware that he actually read it.

MR OWEN: I saw him do it.

(To Interpreter) So let him read paragraph 3 a third time please?

(The interpreter then spoke to the witness.)

A. I do not know what the sentence means.

Q. Mr. Schmieder, was anything left off by you from Defendant's Exhibit G of February 9, 1970?

MR REITER: I object to that. "Left off" in the sense of what?

I think that's the kind of question that just can't be answered without any foundation.

If you are referring to the fact as to whether that states the whole understanding between Mr. Hall, and Mr. Graupner, and Mrs. Deyer, and himself, now maybe that's something else.

But what do you mean by "left off"?

MR OWEN: All right. Let me put the question again.

Q. Mr. Schmieder, did you omit from Exhibit G of February 9, 1971, the *moralische Erwartungen* of which you speak in your affidavit of November 8, 1971?

MR REITER: I object on the ground that "omitting" implies that for the purposes for which this statement was presented it should have been put in. And I think that has to be made a part of it.

This was intended for a specific purpose as was brought out in the previous deposition. And for that purpose Mr. Schmieder testified that this was exactly what was put in front of him, and this is what he signed. He did not write this -- according to the testimony. This was just placed under his nose and he was told to sign. Therefore, there was no occasion for him to have included or omitted anything. So your question assumes that he had the opportunity, or was called upon, to make a more complete statement.

MR OWEN: (To Interpreter) Let me have an answer please?

MR REITER: It is an improper question.

MR OWEN: (To Interpreter) I would like to have an answer.

MR REITER: Let me say I object also on the ground that it hasn't been established that he made this statement up.

(The interpreter then spoke to the witness.)

A. I do not understand the expression. It's not clear to me -- *moralische Erwartungen*.

Q. Mr. Schmieder, when you signed the affidavit of November 8, 1971, with the words *moralische Erwartungen* in it, did you understand at that time what that language meant?

MR REITER: Let me object to this on the ground...

(Mr. Gallieski then spoke to Mr. Reiter.)

A. We had discussed the case together prior to his drafting it, and it is possible that I did not pay enough attention to this particular expression. It is possible.

MR REITER: ...that this is a conclusionary type of statement that presumably was prepared by counsel, and that the response to this question is dependent upon an understanding of the legal consequences of the facts.

Q. Mr. Schmieder, are you talking here in terms of your having a hope or expectation that Mrs. Dwyer would return this property to you?

MR REITER: I object on the ground that the statement speaks for itself, and the characterization on the part of counsel is at best a secondary effort to put additional language or meaning into this -- and that it must speak for itself.

This is an improper type of question to ask with respect to a particular piece of language.

MR OWEN: (To Interpreter) May I have my question answered please?

INTERPRETER: (To Reporter) May I have the question again please?

MR REITER: And I object particularly since the witness has indicated that -- as to this particular language -- he is unclear.

REPORTER: "Mr. Schmieder, are you talking here in terms of your having a hope or expectation that Mrs. Dwyer would return this property to you?"

(The interpreter then spoke to the witness.)

A. Of course, there were such hopes.

Q. So I take it the answer is "yes"?

MR REITER: I think the answer speaks for itself. His characterization is simply an indication of opinion on the part of counsel.

MR OWEN: (To Interpreter) May I ask that my question be answered?

(The interpreter then spoke to the witness.)

A. Well, the answer could be said to be yes. In addition, there was the letter by Mr. Graupner to Mrs. Thingamajigger (phonetic) in Berlin in 1953.

MR REITER: (To Interpreter) Wouldn't "What's her name?" be a better translation?

INTERPRETER: Yes. I do not object.

(Mr. Schmieder and Mr. Galleski then spoke to each other.)

(Mr. Galleski then conferred with Mr. Reiter.)

MR REITER: (To Interpreter) Mr. Schmieder wants to give an additional answer.

(To Mr. Owen) Is there any reason why he can't?

MR OWEN: Well why don't you save it for your redirect here?

MR REITER: Let him make an additional answer.

MR OWEN: Well I don't...

MR REITER: You object to his making an additional answer?

MR OWEN: I do at this time.

MR REITER: Well put it on the record, and then let him give his answer.

MR OWEN: Save it for your redirect.

MR REITER: No. I want it now.

MR OWEN: This is my examination.

MR REITER: He wants to make an additional answer.

MR OWEN: He gave a responsive answer.

MR REITER: Do you want to terminate?

MR OWEN: Now let's not get into this. Please!

MR REITER: I've let you put on the record everything you've wanted.

MR OWEN: Well you can...

MR REITER: Now the witness wants to give an additional answer.

MR OWEN: You can save it for about an hour from now.

MR REITER: I think it's going to be more significant if he gives it now.

I say let him put it on the record now, or else terminate.

Now I've let you...

MR OWEN: If you terminate, the entire examination is void.

MR REITER: I'm not terminating. But...

MR OWEN: If you terminate -- if you direct him not to answer -- the examination is void, and I have been denied my right to cross-examine.

MR REITER: I have let you put everything on the record you have asked for.

Now the witness has asked for the opportunity to complete his answer, and you want to deny him that opportunity, and I...

MR OWEN: The witness has spoken with Mr. Gallecki, and then made the statement that he wanted to complete his answer.

MR REITER: Let me ask Mr. Gallecki:

(To Mr. Gallecki) Did you give Mr. Schmieder any advice?

MR GALLECKI: No, he told me. He told me more details about that letter of which he had a hazy recollection at first.

MR OWEN: I do not understand when Mr. Gallecki and Mr. Schmieder converse in German. It is unfortunate if the appearance is given of conferring with the client. My German is quite rudimentary, as you could tell from the mispronunciations of yesterday.

It would be preferable if there were no conversations between Mr. Gallecki and the witness during the course of the examination.

MR REITER: All right.

MR OWEN: All I'm saying is that if there is re-direct examination on this score, I think it should be held for then. It is proper for me to cross-examine on my schedule with my way. And if there are things that you feel need any clarification, then you can do it in your turn.

Now if you feel that you want to terminate this

examination, you are at liberty to do so. But I think you run the risk of having the entire examination voided on the ground that I have not completed my cross-examination.

MR REITER: Let the record show that the witness has expressed the desire to make a further answer to the last question, and it is at the insistence of Mr. Owen that he is not being permitted to do so.

MR OWEN: No.

I'm saying that he may do it at the proper time, which is on your redirect.

MR REITER: And I have requested the opportunity that he be allowed to give his complete answer to that question at this time.

MR OWEN: Can you give me a good reason why you should break into my cross-examination with your redirect?

MR REITER: I am not planning to ask him a question now. He simply wants to give the rest of his answer to the last question.

MR OWEN: The answer to the last question was "yes."

MR REITER: And then, apparently, he had some additional answer he wanted to give.

And I say he should be given that opportunity at this time.

MR OWEN: I am not denying him that opportunity.

MR REITER: As I understand, he was attempting to locate a name which was characterized by the interpreter as "Whatchamacallit," and I think this should be clarified at this time.

MR OWEN: He wanted to give the name? Let him give the name.

MR REITER: I believe he should be given an opportunity to give an answer as he sees fit.

MR OWEN: (To Interpreter) Let him give the name.

Q. (To Mr Schmieder) Give the name?

A. She was called at that time Frau Krause.

Q. Mr. Schmieder, did you ever at any time tell anyone that Exhibit G of February 9, 1970, was a "fictitious waiver"?

MR REITER: I want to object on the ground that that characterization -- "fictitious waiver" -- is a very technical one. There has been no foundation laid. We have been shown no document in which that was utilized. And it, perhaps, was taken out of context.

It may possibly involve an issue of confidential communication.

I think a proper foundation has not been laid for that question.

MR OWEN: I'm just asking whether he has any memory of ever having used that expression with regard to Exhibit G of February of 1970.

MR REITER: I also want to indicate that this is...

MR OWEN: (To Interpreter) What's his answer?

A. I do not know anything about it.

MR REITER: (To Mr. Owen) Let me finish what I was going to say.

That the words were put to him in German rather than in English -- "fictitious waiver" -- and, therefore, there could be difficulties in understanding in that respect.

MR OWEN: Should I put it to him in English?

MR REITER: No.

Go ahead. He's given you an answer.

MR OWEN: (To Reporter) What was his answer?

REPORTER: "I do not know anything about it."

Q. Is it your answer that you do not recall ever having used that expression?

A. No. Certainly I cannot recollect that.

Q. Did you ever regard Exhibit G for identification in February 1970 as a "fictitious waiver"?

MR REITER: I object on the ground that the use of this rather vague term -- "fictitious waiver" -- without further explanation is a rather stilted one and subject to all

kinds of interpretation.

I, myself, don't know what it would mean in this context. And I doubt whether the witness, in German, would be able to get the proper meaning of it.

MR OWEN: (To Interpreter) Did we get an answer? We didn't get an answer on that, did we?

INTERPRETER: No.

Shall I ask again?

MR OWEN: Please.

(The interpreter then spoke to the witness.)

A. I, myself, considered it as nothing at all because I faithfully and truthfully signed what Mr. Graupner and Mr. Hall wanted me to do.

In addition, you must bear in mind the conditions that were then prevalent in 1948. There were nothing but Bolsheviks around, and all the owners of business were... all the owners of businesses were constantly in the danger of being imprisoned. Actually, it happened to me, myself, too.

There were, for instance, trials going on with six death sentences.

And when, at that time, Mr. Lindner appeared upon the scene it seemed to me as if a good angel appeared to me on the scene. The depression -- the depressed state -- of all of us was such that we just accepted anything that was presented

if it had some hope connected with it.

Q. Mr. Schmieder, Mr. Lindner brought you this document, I believe. Is that correct?

A. Yes. And he took it back again.

Q. Now, you read it before you signed it, did you not?

A. Yes.

Q. Did you say to Mr. Lindner that the document should also say that, "I have a hope or expectation of Mrs. Dwyer giving this property back"?

A. It was very... too early for such a thing, and I did not discuss it with Mr. Lindner. It was not his business because he, himself, was in danger too.

MR OWEN: (To Reporter) Would you mark this please? This will be Exhibit GG for identification.

(Marked by reporter.)

Q. Mr. Schmieder, I show you Exhibit GG for identification -- a letter of three pages in English -- and ask you if it bears your signature on the third page?

A. Yes.

But what is it?

It is my signature.

Q. Mr. Schmieder, how long did you reside in the United States?

A. About 18 months.

Q. And have you visited the United States since, I believe, 1908?

A. No.

Q. When you were in the United States, you were engaged in business, were you not?

A. Well, I was only just 20 when I arrived there; and I was supposed to learn about what is going on in the United States.

Q. And did you deal with American businessmen?

A. Yes. There were, for instance, those Garfield Worsted Mills in Passaic. But I did accompany the sales agents on their tours.

Q. Mr. Schmieder, you testified that monies of yours were seized by the United States Government during World War I, is that correct?

A. Yes. Well, this was mainly money of my father's, but I was the only heir.

Q. And did you participate with your lawyer Johnson in seeking the recovery of that money?

MR REITER: I object on the grounds that I don't understand the word "participate," and I think it should be more clearly tied down as to what you mean.

MR OWEN: I'll ask it again.

Q. I believe you said that you employed or you engaged

Mr. Johnson as your lawyer to recover these monies?

A. Yes.

Q. Did you confer with him?

A. Yes, several times.

Q. Did he prepare a claim for you?

MR REITER: I object on the ground of privilege.

I allowed the last question to be answered, but now we're getting into the area of something that he must have learned as a result of a confidential communication.

MR OWEN: Well if he prepared a claim and that's submitted to the Federal Government, then there's no confidentiality attached to it.

MR REITER: Well we haven't established anything in that respect, except that it should be gone into as to whether or not the information that he obtained with respect to such a preparation -- if it did occur -- came from the attorney.

My point is that we're now beginning to get into an area where I don't want to have it said that we waived any kind of privilege.

You had better ask him the source of his information in this respect -- as a preliminary question.

Then we'll decide this.

MR OWEN: All right.

Q. Mr. Schneider, was a claim presented by your lawyer to the United States Government?

MR REITER: I object on the ground that again it has not been ascertained -- in addition -- as to how he acquired such information, if he would have acquired it in this respect.

MR OWEN: (To Interpreter) May I have an answer to the question?

(The interpreter then spoke to the witness.)

A. Yes. He did submit the claims.

Q. Did you sign papers in connection with the claim?

MR REITER: Same objection.

MR OWEN: (To Interpreter) Go ahead.

(The interpreter then spoke to the witness.)

A. I don't think that I signed much. Mr. Johnson had a Power of Attorney and he was able to sign for me. But I signed the receipt. However, I think that even that could have been signed by Mr. Johnson because he had this Power of Attorney.

Q. Do you recall, Mr. Schneider, why your property was seized by the United States Government?

MR. REITER: Object on the ground that this calls for a legal conclusion.

This man is not an expert...

MR OWEN: He may have been told.

MR REITER: ...on World War I property.

And if he was told by his attorney, that's something else. Then it would be privileged.

MR OWEN: No, that's not so. It's a question of confidentiality. It's not a question of where it comes from.

(To Interpreter) Could I have an answer to my question? -- whether he knew the ground on which his property was or had been seized.

(The interpreter then spoke to the witness.)

A. The English and the Americans were champions at seizing. They took everything they could lay their hands on. And what's worse? They took it from private persons.

MR OWEN: I move to strike all of that.

Q. I ask you if you know the grounds on which the property was seized?

MR REITER: Same objection.

A. Because we were enemies at war.

Q. Now in 1928, Mr. Schmieder -- or thereafter -- your property was divided into two parts, was it not?

MR REITER: Objection.

A. A little later.

Q. Do you recall when?

A. I think it might have been in the beginning of the

30's.

Q. Now, in your testimony yesterday, you described the larger of the two funds as being "hot money," did you not?

A. Yes -- vis-a-vis the German tax authorities.

Q. Now, as to the smaller of the two accounts, did you advise the German tax authorities of the existence of the smaller of the two?

MR REITER: I object on the ground that it hasn't been established that there was any requirement that they had to be notified.

MR OWEN: I asked him whether he did.

A. Yes. The tax authorities collected currency, and the dividends on my securities...

INTERPRETER: Stocks and bonds, I suppose.

A. (continued) ...were also paid in... were converted into German currency.

Q. Mr. Schmieder, when you reported this second fund to the Nazis, where did you report that?

MR REITER: I want to object on the ground that there has been no indication that he reported them to the Nazis, or that there were Nazis in the German Government -- or in control of the German Government -- in the beginning of the 1930's.

I think it is an improper characterization and I object to it.

MR OWEN: I'll put it again.

Q. Mr. Schmieder, did there come a time where you told the Nazis at Meerana that you had this second fund?

MR REITER: Object on the ground that the "Nazis" is an improper characterization.

Again, was it the Nazi Government?

Was it the Nazi Party?

Who was it that he's referring to?

MR OWEN: All right.

Q. Did you tell someone...

Mr. Schmieder, did there come a time where Germany was under the control of the *National Socialist Party*?

MR REITER: Objection on the ground that -- although I don't know whether this is the intention of counsel for the defense -- he, presumably, is attempting to establish some political circumstance and he has not qualified his witness as an expert.

I don't mind his doing it. But I just wanted to lay that out -- that he's making him an expert.

MR OWEN: You mean I couldn't say that Herbert Hoover is no longer President of the United States?

MR REITER: Well, there are certain things that are established in certain ways.

(To Interpreter) Go ahead and answer his question.

But I am going to interpose an objection.

(To Mr. Owen) If you want to have him testify on political conditions, this is your prerogative to try.

(The interpreter then spoke to the witness.)

A. Yes, of course.

Q. When did that happen?

A. From 1933 until 1945, and that was the end.

Q. Now after 1933, did you tell anyone in the National Socialist Government of the existence of your second fund in America?

A. No.

Q. Didn't you give a list of your securities in the second fund to the authorities in Meerana, Mr. Schmieder?

MR REITER: I am not sure that I recall what the second fund consisted of. The characterization is not clear to me.

I think it should be described -- what the second fund is -- in the question.

There were two funds, but I don't know which is the first and which is the second.

MR OWEN: The second is the smaller fund.

MR MEDVERD: Can you ask the question again?

MR OWEN: (To Interpreter) Could you put it again, designating it please as the smaller fund?

INTERPRETER: Yes.

(The interpreter then spoke to the witness.)

A. Yes. I had to make such a list for tax purposes.

Q. And when did you do this?

A. That was even before the Nazis.

Q. And it continued through the Nazis?

MR REITER: Objection because the only thing that was asked was whether he provided them with a list. A list doesn't continue. A list was given. And it was testified to by the witness that it was given to the Government prior to the Nazis.

Q. Mr. Schmieder, did you continue to pay taxes on these securities after the Nazis took power?

A. Yes, of course -- on that one-third that was known.

Q. Mr. Schmieder, in 1938 did you have relatives in the United States?

A. Well, not really.

Q. Mr. Schmieder, when did Jenny Boehmann die?

A. We have established that already. Four or five years ago, I think.

(In English) I think in 1968. Or...?

I think it was in 1968 or 1969.

Q. Mr. Schmieder, you never paid a gift tax on the property given to Mrs. Dwyer, did you?

MR REITER: Objection. There is no indication this was in fact a gift for purposes of American taxation.

The way the question was asked -- whether he had paid a gift tax on the gift to Mrs. Dwyer -- I think it was improperly asked, and stated a legal conclusion.

MR OWEN: All right.

Q. Concerning the property transferred to Mrs. Dwyer in 1938, did you, Kurt Schmieder, pay a gift tax on it?

A. No.

Q. Mr. Schmieder, who was Annaliese Krause?

A. She was the daughter of the lady who administered our houses in Berlin. In Berlin, we had a tenement, or apartment houses -- apartment houses for rent.

MR REITER: Rental property, I guess.

INTERPRETER: Yes.

Q. How many apartments did you have?

A. I cannot say that exactly. Some houses would have 25 people living in it. Some others, 40 people.

Q. And how many houses?

A. We have two big houses.

Q. And little houses?

A. No. There were no small houses. My son and my daughter both had a house financed by me, but this lady was in charge of the administration of them too.

Q. During what period of time did you have these two houses?

MR REITER: Let me say that I object. I see no possible connection with these houses in Berlin which were owned by the witness to anything that has been testified to this morning, or before. I think it is irrelevant and immaterial.

MR OWEN: He has volunteered a certain relationship with Annaliese Krause, and I am exploring what the... what that relationship is.

MR REITER: Well it has been established that she was the daughter of the administrator of some houses. I don't see...

MR OWEN: I want to know how long it lasted.

MR REITER: I object.

MR OWEN: (To Interpreter) May I have an answer to the question please?

(The interpreter then spoke to the Witness.)

A. Starting in 1940 to now.

Q. Were these houses in Mr. Schmieder's name? Or were they in the children's name?

MR REITER: You're going to get that wrong. You ought to say: Were they in your name or your children's name?

MR OWEN: All right.

Q. Were those in your name or your children's name, Mr. Schmieder?

A. The houses that we own now were in the name of my wife.

Q. Mr. Schmieder, did you pay for the setting up of the Stoneleigh Corporation in New York?

MR REITER: I object on the ground that the testimony has been that this was all done by Mr. Hall in New York without any further consultation.

MR OWEN: I'm asking if he paid the fees for the setting up of the corporation.

MR REITER: Again, his testimony was previously that this was all handled by Mr. Hall and Mr. Graupner.

MR OWEN: So the answer is he did not pay for it?

MR REITER: (To Interpreter) He can answer it.

(The interpreter then spoke to the witness.)

A. It was done by Mr. Hall and Mr. Graupner, and the fees were paid from the capital deposited with the New York Trust Company.

Q. Did anyone tell you that?

MR REITER: I object on the ground that this would definitely fall within the area of privilege.

MR OWEN: All I'm asking is...

I'll ask it again.

Q. Mr. Schmieder, how did you learn that the fees were paid by the New York Trust Company?

MR REITER: Same objection on the ground that he has testified that this was all handled by Mr. Hall in conjunction with Mr. Graupner; and it must, therefore, fall within the area of privileged communication.

MR OWEN: If it does, it does; and if it doesn't, it doesn't, I submit, Mr. Reiter.

Let's get an answer.

MR REITER: My objection is just a matter of record.

MR OWEN: All right. Fine.

(To Interpreter) May I have an answer please?

A. I still don't know it.

MR REITER: (To Interpreter) "I don't know it today," isn't it?

INTERPRETER: "I still don't know it."

MR GALLESKI: "Today."

MR REITER: "Even today I don't know it."

INTERPRETER: *Immer noch nicht -- heute noch nicht.*

MR GALLESKI: "I don't know today."

MR OWEN: "I still don't know today," is that it?

INTERPRETER: Yes.

MR OWEN: (To Reporter) What's the answer that's going down?

REPORTER: I have, "I still don't know it."

INTERPRETER: Yes. "Still." "Even now."

MR OWEN: (To Interpreter) "Even now I don't know?"

MR GALLESKI: (To Mr. Owen) She doesn't know.

INTERPRETER: I do know. I always translate *heute noch nicht* as "still don't know" -- *immer noch nicht; heute noch nicht.*

MR REITER: (To Interpreter) You do it the way you want it.

MR OWEN: (To Interpreter) "I still don't know it." Is that the answer that's going down?

If that's the answer, I'll...

INTERPRETER: Yes.

MR OWEN: All right.

Gentlemen, that's all I have.

MR GALLESKI: I think we should have lunch now.

MR REITER: Let's take a break until 3 o'clock.

MR OWEN: Fine.

(A recess was taken from 1 o'clock to 3 o'clock.

All parties to the proceeding present when the proceeding recessed were again present.)

REDIRECT EXAMINATION

BY MR REITER:

Q. Mr. Schmieder, I show you Defendant's Exhibit AA-1 for identification and ask you what you meant when you testified in that connection that you did not understand "September 1, 1939," as used in that exhibit?

A. The 1st of September 1939 was the beginning of World War II, if I remember correctly.

But I do not see and understand what 1st of September 1939 means in connection with this language.

Q. Do you know where Rolf Schmieder lives?

A. Yes.

Q. Where is that?

A. Muenchberg, with the Area Code 866, and Postal Box Number 113.

Q. Do you know whether he is in any condition -- physically or mentally -- to give testimony?

MR OWEN: Object to the form. No foundation laid.

INTERPRETER: Should I...?

MR REITER: Yes.

(The interpreter then spoke to the witness.)

A. Yes, he is.

But at the time being, he was too young for the whole business.

Q. When the *Stahlhelm* was forcibly incorporated into the SA, what was the attitude of the *Stahlhelm* leadership

towards that?

MR OWEN: Object to the form of that question.

Q. (Continued) If you know.

(The interpreter then spoke to the witness.)

A. One part went voluntarily. They were the Party people. Then one part went reluctantly. And one part was very reluctant and they were the opponents of Hitler.

Q. Who were the leaders of each of these groups?

A. One group was under Duesterberg.

And the other group was headed by Seldte, who -- in a manner of speaking -- ran over to the Nazis.

Q. Of which group were you a member?

A. I, of course, was a member of the Duesterberg Group. And so were most of my friends.

Q. How long did the Duesterberg Group continue in existence?

MR OWEN: I object to this in terms of form.

We don't know what the Duesterberg Group is. What does it consist of? Did it have rules? What is meant by "Group"?

MR REITER: Let me inquire.

Q. What was the "Duesterberg Group"?

A. The Duesterberg Group actually was the opponent of the Seldte Group.

Q. What was it about the Seldte Group that the Duesterberg Group opposed?

MR OWEN: I object to the form of that question.

A. There was no direct opposition. They were just two worlds apart.

Q. Mr. Schmieder, what direction did the Duesterberg Group take?

MR OWEN: Object to the form.

A. This had to do with the war; and the longer the war lasted, the more this Duesterberg Group grew concerned about Germany.

Q. What, if anything, did this group do?

MR REITER: (To Interpreter) If he knows.

MR OWEN: I still object to the form.

MR REITER: (To Interpreter) Go ahead.

(The interpreter then spoke to the witness.)

A. The last effort of this group -- that might almost be called an underground movement then -- was to reach an armistice agreement with the enemy to oust the Nazis from government, and to replace them by other people.

MR OWEN: I object to the form of the answer.

Q. At the time you were interviewed by Mr. Orenberger, from the American Consulate General's Office in Munich, did you have an attorney present?

A. No.

Q. Was there, at that time, any mention made of your right to counsel?

A. No, there was no mention of it.

Q. Did Katz and Sommerich, or anyone else, inform you of the intended visit of Mr. Orenberger?

A. Katz and Sommerich did not inform me, but the Center in Munich -- I don't know its exact name -- has informed me that I was going to receive such a visit.

Q. Did Katz and Sommerich, or any other attorney, give you any preparation for that visit?

A. No.

Q. Are you aware of any effort on the part of Mr. Louis H. Hall, Sr., or Mr. William Graupner, to ascertain the facts of your persecution of which you have testified?

MR OWEN: Object to the form of that.

And no foundation laid.

A. I don't quite understand the question.

Q. Did you ever discuss with Mr. Louis H. Hall, Sr., or Mr. William Graupner, the possibility of your claiming the return of assets that were confiscated?

MR OWEN: Object to this on the ground that it is much too general, and bad in form.

MR. REITER: Let me try again.

Q. Did you ever have occasion to discuss with Mr. Louis H. Hall, Sr., anything relating to a claim to be filed with the United States Government for the return of property which was seized during World War II?

A. They have caused Mrs. Dwyer to make an objection to the Dwyer Trust.

MR GALLESKI: Not "to the trust."

INTERPRETER: "In the case of the Dwyer Trust, they caused Mrs. Dwyer to raise an objection."

Q. Was there any discussion with respect to a claim in your behalf directly on the basis of persecution?

A. We did not realize that at the time being, because otherwise I'm sure Sommerich would have done that.

Q. Did you at any time receive any assistance from Louis H. Hall, Sr., or William Graupner, in connection with a possible claim -- directly on your part -- based upon persecution?

MR OWEN: I object to the form of the question.
And no foundation laid.

A. Well, the claim on my behalf had been dismissed. But the claim on behalf of Mrs. Dwyer was split.

MR SCHMIEDER: (In English) To split it, or...

MR GALLESKI: "Settled."

INTERPRETER: *Gesetzt.*

MR GALLESKI: "Compromised."

INTERPRETER: I see.

"But the claim on behalf of Mrs. Dwyer was settled or compromised."

Q. Are you aware of any efforts having been made by Mr. Hall, Sr., or Mr. William Graupner, to obtain the return of the two-thirds to you based upon persecution?

MR OWEN: Object to the form of the question.

No foundation laid.

A. Both made an effort because both gentlemen were, so to speak, behind the scenes in this trial.

MR OWEN: Well I move to strike the answer as being bad in form, using the word "effort" which is obviously based on no personal knowledge whatsoever of the witness and, therefore, inadmissible.

The word " effort" is a conclusion that gives the trier of the fact no fact.

Q. Do you know whether the efforts of Mr. Hall and Mr. Graupner were made in behalf of Mrs. Dwyer, or in behalf of you?

MR OWEN: I object to the form.

A. As long as Mrs. Dwyer's trial ran, of course they had to give support to Mrs. Dwyer.

Q. Do you know whether any effort or attempt was made

by Messrs Hall and Graupner to proceed on the basis of your persecution in the claim against the Attorney General?

MR OWEN: Object to the form.

A. I don't think so because matters had not come to a head at that time.

One of them died in 1949, and the other died in 1954.

Q. To your knowledge, was any effort made to present a showing of your persecution in support of Mrs. Dwyer's action against the Attorney General?

MR OWEN: Object to the form.

A. This has happened only recently, or is supposed to happen.

Q. If you know, who instructed Jenny Bochmann to make the transfer of the New York Trust Company account from her name to the name of Stoneleigh Corporation?

MR OWEN: Object to the form.

A. That was I.

Q. Mr. Schmieder, are you familiar with the *Volkssturm*?

A. Yes, unfortunately.

Q. Will you tell us what you know about the *Volkssturm*?

MR OWEN: Object to the form.

A. In my honest opinion, it was a heap of rubbish or muck.

(In English) Himmler was the Commander.

Q. What was the *Volkesturm*

A. The *Volkesturm* grouped unpopular intellectuals. In the *Volkesturm* you had unwanted or unpopular intellectuals like myself -- up to the age of 60. I, myself, was 57 when I had the pleasure of becoming a member.

In addition, there were Communists. There were Social Democrats. In short, there was everybody the Nazis did not like.

Q. Mr. Schmieder, did you voluntarily become a member of the *Volkesturm*?

MR OWEN: Object to the form.

MR REITER: Withdraw that.

Q. Mr. Schmieder, were you a member of the *Volkesturm*?

A. Yes. I was a forced member -- as almost everybody else in the *Volkesturm*.

Q: What were the functions of the *Volkesturm*?

MR OWEN: I object to the form.

A. The *Volkesturm* itself didn't know what they were.

Well, in part, we did some exercising -- but moderately. We did it in our own civilian clothes, and we were given a Nazi cap.

And when it was cold outside, we had to take along our own coats.

First, we were quartered in villages and *gasthauses*, and they were bad quarters. And in the last few weeks, we were let loose, so to speak. We went from place to place. We marched around in the *Erzgebirge*.

And in the neighborhood of Dresden, we put up tank barricades. That, of course, was a child's play. That, of course, was childish play -- because the tanks merely moved around these barricades over the fields.

MR GALLESKI: As a matter of translation, I would say not "child's play" but "childish".

INTERPRETER: "Childish play," yes.

A. (Continued) On this hiking -- because you cannot call it anything else -- we came through many places, and we had to find our own quarters often. And when, in the last few weeks of the war, we came to such places, we used to ring people's doorbells -- or knock at the door -- and ask them, "Can we listen to the radio here?" And they said, "Yes, please step in."

(The witness continued to speak.)

MR OWEN: I--I... There's no question pending here and this is now a narrative, I take it, of what he has done -- not what the *Volkssturm* was.

I don't know what question he is answering.

MR REITER: My impression is he's giving his impressions of what the *Volkssturm* did.

MR OWEN: He is now giving a narrative of what he did.

MR REITER: During his time in the *Volkssturm*.

Q. Mr. Schmieder, will you conclude your remarks regarding your experience with the *Volkssturm*?

A. Yes.

And we knew when the London station was broadcasting -- at what hours -- and when we came to these people, we used to tune the radio to the London station. And the population was frightened, or startled -- but they didn't say anything.

Q. At this time, was the listening to foreign radio stations prohibited by German law, do you know?

MR OWEN: Object to that.

A. Yes, of course -- because those who did not own houses but an apartment with thin walls could be denounced when other people heard that they listened to the London station.

Q. Do you know what the effect of such a denunciation would be?

MR OWEN: Object to the form.

A. Concentration camp.

MR REITER: I have no further questions.

RECROSS EXAMINATION

BY MR OWEN:

Q. Mr. Schmieder, was Himmler in charge of the *Volkssturm*?

A. Yes -- in name.

Q. And what was his position?

A. He was -- in a manner of speaking -- a General Field Marshal.

MR GALLESKI: No! He was "more than".

(The interpreter then spoke to the witness.)

A. (Continued) He was more than a General Field Marshal, and politically speaking he was a real toughie. He was one of the most powerful men among the Nazis.

Q. How long were you in the *Volkssturm*?

A. First -- in the end of 1944 -- we merely had work-outs on Sundays.

But, in February we were drafted by order. We found an order in our mailbox saying be at the station at such and such a time with some luggage.

Q. And did you go?

A. I had to; otherwise they would have gone for me.

Q. And how long were you in?

A. From February until the beginning of May.

Q. What happened at the beginning of May?

A. As far as I recollect, the Armistice was concluded on the 8th or 9th of May. And then I went to my Company Commander and said, "I am going home now."

Q. What rank did you have in the *Volkssturm*?

A. I was just a plain *Volkssturm* man.

Q. Did you carry a weapon?

A. My weapon was just a make-believe weapon. I had a rifle, and while we were marching the rifles were transported behind us on a vehicle.

Some companies of the *Volkssturm* were actually used on active duty and completely destroyed by the Russians, but our unit was sensible enough to say, "We are not going to be on active duty."

MR OWEN: I move to strike the last part of the answer as unresponsive.

Q. Are you saying that your unit did not see active duty?

A. We were actually supposed to be on active duty, but the Company Commander said that our unit was not fit for such duty. And this was eight days before the end of the war. Our Commander knew what was happening -- what was up.

Q. And you say that you had a rifle which -- with

other rifles when you moved -- was carried in a vehicle?

A. This was true of the whole company. While we were marching, we were hardly ever with our carbines.

Q. Now, Mr. Schmieder, when you were interviewed by the American Official from Munich, Mr. Orenberger, you were told that you were going to have this meeting before?

A. Yes. He announced himself.

Q. Mr. Schmieder, how much before the meeting did he announce himself?

A. A few days. Maybe he even called beforehand -- that is possible. And I told him where I lived.

Q. Now did you prepare Exhibit DD after he telephoned you?

MR REITER: I object on the ground that there is no testimony that this document was prepared by the witness. Therefore, it has an improper foundation.

MR OWEN: (To Interpreter) I'll have an answer to the question please.

(The interpreter then spoke to the witness.)

A. No. This was before. It was 1950.

Q. Mr. Schmieder, did you prepare Exhibit DD?

A. No.

Q. Who did?

MR REITER: I object.

A. I suppose that this Notary, Mr. Leyn, spoke to Mr. Burkhardt because he knew me well. And he then made this statement.

MR OWEN: I think he used the word *Rechtsanwalt* in there as well -- in connection with the word "Notary." He said Mr. Leyn was a "Notary" and *Rechtsanwalt*.

MR REITER: "Notary" is a lawyer. You know that.

(The interpreter then spoke to the witness.)

INTERPRETER: "Notary."

MR OWEN: Okay.

(To Interpreter) Let's hear the answer again please that he previously gave in German.

INTERPRETER: *Ich nehme an, dass der Rechtsanwalt, der Notar Leyn, mit dem Herrn Burkhardt gesprochen hat und er wusste um was sich's handelt weil er mich gut kannte und er hat dann sein Aussage gemacht.*

Q. Mr. Schmieder, did you know Mr. Leyn in 1950?

A. I knew this gentleman, but I had other lawyers in Meerane too. But in this particular case, Mr. Leyn was competent because not all lawyers are a Notary Public.

Q. Did you ask Mr. Leyn to obtain this affidavit from Mr. Burkhardt?

A. I don't remember that exactly. It would be too much to say that I had demanded it of him. This man wanted to

testify. It was not a case of asking him to do so.

Q. Mr. Schmieder, did you obtain this affidavit for the purpose of giving it to a representative of the United States Government?

A. Yes. It was one of the purposes, but it had other purposes.

I wanted to use it for the Bolshevik City Government in Meerane, and for the Party people in Meerane.

So that was an all-round affidavit then to be everywhere.

Q. Now when you knew Mr. Orenberger was coming to visit with you, did you confer with Mr. Leyn?

A. No. He came five years later.

In January of 1951, I fled to the West. And he came later.

Q. Mr. Schmieder, in 1962, were you living here in Lörrach?

A. I have been...

In 1962, I had been here for ten years.

Q. Did you in 1962, in Lörrach, have a lawyer?

A. No.

For what purpose should I have one?

Q. Mr. Schmieder, were there lawyers in Lörrach in 1962?

A. Yes -- enough.

Q. Did you know any?

A. Yes. I knew one who contacted Mr. Galleski.

Q. Now, Mr. Schmieder, when Mr. Orenberger from Munich came to see you, did you speak to any lawyer in Lörrach before he came?

A. No.

MR OWEN: I have no further questions.

MR REITER: We have no further questions.

This concludes the deposition.

(The proceeding terminated at 4:15, Thursday, 6

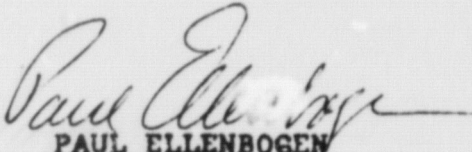
September 1972.)

CERTIFICATE OF REPORTER

I, Paul Ellenbogen, an Official Shorthand Reporter assigned to the Office of the Judge Advocate, Headquarters, United States Army, Europe and Seventh Army, APO New York 09403, do hereby certify that I reported by shorthand the proceedings had and testimony adduced in the examination before trial in the case of Kurt Schmieder, Plaintiff, v. Louis H. Hall, Jr., as Preliminary Executor of the Estate of Helen B. Deyer, Defendant, Number 69 Civil 1939, on the 5th and 6th of September 1973.

I further certify that the foregoing 169 pages constitute the official transcript of said proceedings as taken from my shorthand notes.

In witness whereof. I have hereto subscribed my name this 12 day of November 1973.


PAUL ELLENBOGEN
Official Shorthand Reporter

TRIAL TRANSCRIPT BEFORE HON. WHITMAN KNAPP ON JUNE
30, 1975

240a

rdrf

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

KURT SCHMIEDER,

Plaintiff,

-against-

LOUIS H. HALL, JR., as Executor
of the Estate of HELEN B. DWYER,

Defendant.

BEFORE:

HON. WHITMAN KNAPP,

District Judge

New York, New York

June 30, 1975 - 10:00 a.m.

APPEARANCES:

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MR. DUFFY: Plaintiff is ready.

MR. MARTIN: Defendant is ready.

THE COURT: Just by way of preliminaries, I went over the briefs and the defendant's request for character testimony. That testimony will be received.

MR. MARTIN: It will be received, your Honor?

THE COURT: It will be received.

MR. MARTIN: Thank you very much, your Honor.

THE COURT: Obviously, I assume in this case there is going to be an appeal, whichever side wins, so I think more important perhaps than the rulings of law that I make is that we have clear findings of fact.

Therefore, even if I conclude that a legal proposition which either side urges is either wrong or not determinative, I will make appropriate findings of fact.

With that as a basis, which is not indicative of rulings but indicative of where I think the problems lay.

In the first place, in order for the plaintiff to prevail I will have to find that Mrs. Dwyer was merely an agent for the Halls in this transaction with Schmieder, because it is perfectly clear that Schmieder comes into court with unclean hands and if it were not for my view that where a client is acting on the advice of a lawyer,

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2 the lawyer is not entitled to raise the defense of unclean
3 hands because in my view the overriding public policy
4 is that he is barred. Obviously, Mr. Dwyer is under no
5 such personal obligation. Therefore, if we were looking
6 at it as between Schmieder and Mrs. Dwyer, as I now see the
7 facts -- of course the plaintiff may persuade me otherwise
8 before it is over -- as I now see the facts it is perfectly
9 clear that he is coming into court with unclean hands.

10 Incidentally, my view with respect to equities
11 as between the lawyer and client was fortified by the
12 case the defendant cited, the old Circuit Court of Appeals
13 case. In that particular case they found the rule didn't
14 apply, but they stated the rule it seems to me in such
15 a way as to apply very aptly as between Schmieder and the
16 Hall firm.

17 Obviously it doesn't apply between Schmieder
18 and Mrs. Dwyer.

19 Also, preliminarily, it doesn't seem to me that
20 the unclean hands doctrine has anything to do with the
21 situation prior to the present.

22 What was the name of that lady?

23 MR. MARTIN: Mrs. Bochman.

24 THE COURT: The case you cited, the defendant
25 cited showing the trust was not enforceable against Mrs.

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2 Bochman doesn't seem to me to be applicable here. That
3 was a case where a trust, which was established by a
4 father with his son in order to avoid taxation, even though
5 as I recollect, in a foreign country. And the Court said
6 the father couldn't enforce that trust against the son.

7 However, it doesn't seem to follow that in that
8 case if the son had voluntarily carried out the terms of
9 this trust that a third person could take advantage of
10 it and take the money away from the person whom the son gave
11 it to in conformance with his father's wishes.

12 In other words, he doesn't turn the money loose
13 at the whole world.

14 However, as I say, I will make appropriate find-
15 ings of fact, concluding, if the evidence bears out my
16 present impression, that had Mr. Schmieder sued Mrs. Bochman,
17 he would not have recovered.

18 On the factual issue that is presented, the whole
19 thing, to my mind, and again this is just on the basis of
20 reading the briefs. It may be different after I had my
21 nose rubbed in the actual testimony. On page 8 of the
22 defendant's trial memorandum when he tries to invoke
23 what would be Mr. Schmieder's mind back in 1973 when this
24 transaction was initiated, and he postulates later that he
25 wouldn't want to risk that by keeping any string on the

money.

It seems to me the question presented by that is what was in Mr. Hall's mind when he gave Mr. Schmieder the advice which he gave him, because this point that the defendant raises postulates the possibility that Germany might win the war, which, of course, as you point out is not possible now, but in 1937 it seemed quite a possibility.

Given that possibility it seems to me the advice which Mr. Hall gave, is alleged to have given, is monstrous. Because had Germany won the war and all the other facts being the same, this litigation would now be going on in Germany and the issue should not be whether who should get the money, but whether Mr. Schmieder should be hung. That doesn't seem to be very good advice.

If everything was to follow, the advice made to her, public record made of the transaction, Germany would have won the war and the victorious German Government would have hung Mr. Schmieder.

That is all of the preliminaries.

Now, what about the supposed pretrial order? As far as the facts are concerned it would seem to be identical except G and H are said to be agreed by the plaintiff and not agreed by the defendant.

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If the defendant doesn't think they are true, I don't think they are relevant.

MR. MARTIN: Letter G, is that the question, your Honor?

THE COURT: Yes. As I look quickly at the two submitted pretrial orders and the statements of fact in both were the same, except G and H.

MR. MARTIN: I think, your Honor, the objection to those were, A, the conclusory nature. There is going to be evidence. Mr. Hall is here. He is going to be called to testify. As far as the trust instrument itself is concerned, we felt that itself was the best evidence rather than simply getting into what it said.

MR. DUFFY: The only reason I put those in there was as a result of an exchange of correspondence where Mr. Turchin wrote me and said with respect to, items 21 and 23, those were the two items in my letters, that we don't dispute the wills and trust provided for these gifts.

He does urge that they are relevant. So I don't think there is a factual dispute. There may be a relevancy dispute.

THE COURT: Anyway, the documents would speak for themselves. But as to G you are going to have Mr.

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2 Hall testify and you can go over the conclusions then.

3 MR. MARTIN: I don't know what your Honor's
4 pleasure is with regard to the exhibits. It does seem to
5 me that Mr. Duffy has indicated a lot of exhibits that
6 we have premarked or transcripts in other proceedings,
7 together with all exhibits related thereto.

8 We have some general overall objections as to
9 relevance of some of them and competence as to particular
10 portions. Yet at the same time I don't know that it
11 would be worthwhile to burden your Honor by having us go
12 through those one by one. This is not a jury trial.

13 THE COURT: Well, maybe it would be helpful if
14 we just went through them. In the course of discussions of
15 why they were relevant or irrelevant I can gather what you
16 are trying to prove by them. Where I have a whole mass
17 of documents, it is not altogether clear to me what you
18 respectively think they prove, and maybe it would be
19 helpful to go through them with that in mind.

20 Does the plaintiff have any live witnesses?

21 MR. DUFFY: Yes, your Honor. We intend to
22 call Mr. Hall who I note is present in the court.

23 THE COURT: Wouldn't it be sensible to start
24 with the live witnesses?

25 MR. DUFFY: In considering how we might proceed,

1 your Honor, I had thought it might be appropriate to
2 introduce the documents as to which there was some
3 objection, but I would follow any wish that the Court might
4 have with regard to that.
5

6 THE COURT: I think you have an idea of how
7 you want to proceed and I think perhaps the best thing to
8 do is to proceed according to your idea.

9 MR. DUFFY: First, I don't know which pretrial
10 order you will be signing. I would just make a comment
11 about Mr. Turchin's pretrial order. I would not be aware
12 that he had any objections to ourselves until I received
13 this in the mail on the weekend but I do think if he feels
14 that some of the documents that we have not objected to
15 that are objectionable, that there is a problem with his
16 order.

17 I am referring specifically to his Exhibits
18 K-2 through 7.

19 THE COURT: What page is that?

20 MR. DUFFY: Page 7 of his pretrial order. Those
21 would be the exhibits we have listed on Schedule D.

22 Our Schedule D does not conform. There is a
23 variance in the two schedules.

24 Schedule D are those exhibits that we have
25 agreed or we believe we have agreed with Mr. Turchin to

1 introduce into evidence subject to certain objections
2 that we have noted on separate slips of paper and initialled.

3 THE COURT: Well, Mr. Turchin's pretrial order
4 sets forth objections which you don't think exist; right?
5 No, he said, "Plaintiffs makes no objection to the
6 following," you say they do object.

7 MR. DUFFY: I think there is some discrepancy.

8 THE COURT: Why not take his pretrial order as
9 the model and bring up the objections you have to it.

10 MR. DUFFY: The only one that I believe we have
11 not objected to in the K series is K-2.

12 THE COURT: You don't object to that?

13 MR. DUFFY: No.

14 THE COURT: You do object to 4, 5, 6, 7?

15 MR. DUFFY: Yes. Actually, we would have no
16 objection to any of those K-4, 5, 6, 7, if Mr. Turchin
17 were in a position to produce the initial chain of that
18 correspondence.

19 THE COURT: Do you know what he is talking
20 about?

21 MR. MARTIN: I do, your Honor. There is some
22 apparent reference -- some indication there was an earlier
23 letter in this chain. This is an exchange between
24 Schmieder and the Reichsbank in 1939 in which he -- you may
25

1 recall, there were two funds Schmieder had here, the hot
2 money, and the other one maintained in his own name.
3 This is an exchange of correspondence he has with the
4 bank in Germany, the official rate of foreign control.
5 Relating to that second count in his name there is some
6 indication there was an earlier letter in the chain.
7 The only way we came upon these is through the files of
8 the proceedings before the alien property custodian
9 in the Treasury and we got the copies that I have marked
10 from Mr. Schaeffer from the Government's files. This simply
11 is not the first of those letters.
12

13 THE COURT: He says that they are letters from
14 Schmieder to the bank and from the bank to Schmieder.

15 MR. MARTIN: Our only objection is that there
16 are other letters that aren't here?

17 MR. DUFFY: Yes.

18 THE COURT: It seems to me that doesn't object
19 to the competence. Assuming you are not accusing your
20 opponent of deliberately withholding.

21 MR. DUFFY: No, no. I don't think either one of
22 us are aware of what the first letter said.

23 THE COURT: I would think that just goes to
24 persuasiveness. A statement by the plaintiff would seem
25 to me to be competent. You can argue it doesn't mean

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2 what it says because he doesn't know what he said the
3 week before. That is proper argument for excluding
4 the letter.

5 MR. DUFFY: The only reason I raise the point,
6 your Honor, is there seemed to be an indication we had
7 no objection at all and we do have some objection and if
8 necessary we will raise it.

9 THE COURT: That objection, as far as I understand
10 it, is overruled without prejudice to your arguing
11 that we should disregard them because of the incompleteness,
12 because I can't understand them.

13 MR. DUFFY: Your Honor, one other thing I
14 should inform the Court of before we move forward, and that
15 is we have some documents on the way over from the U.S.
16 Attorney's Office. They just received the file this morn-
17 ing. We had hoped it would come in over the weekend but
18 it did not.

19 I trust we will have those documents at the
20 time that we need them. If not, perhaps we can defer their
21 introduction and work around it if they don't get here
22 soon enough.

23 THE COURT: Do I then understand that the
24 plaintiff's proposed pretrial order, with the objections
25 noted which I have overruled, does not conform with your

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2 understanding?

3 MR. MARTIN: The defendant's pretrial order.

4 MR. DUFFY: With those few limited exceptions,
5 that is correct.

6 THE COURT: Then we will accept the defendant's
7 pretrial order as the working copy. Although there is no
8 place for me to sign it I will presume that it has been
9 signed.

10 You may proceed.

11 MR. DUFFY: Your Honor, we would like to introduce
12 in their entirety as Plaintiff's Exhibit 26-A and 27-A
13 the two transcripts of the examinations before trial of
14 Kurt Schmieder, the plaintiff. One taken in 1970,
15 which would be 26-A, and the other taken 1973. These
16 would be the transcripts as filed by plaintiff and I
17 believe they are in the court records.

18 THE COURT: Let's just make sure that we have
19 them.

20 MR. MARTIN: Your Honor, this is, again, a
21 document that I would have no objection to the fact that
22 that is the authentic transcript. It does seem to me,
23 like all pretrial depositions, it contains many portions
24 which I think are irrelevant, some which are not competent
25 evidence, and this is what I started to raise with your

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1 Honor before. It seems to me that since there are a
2 number of transcripts that will be offered here, that rather
3 than have us burden the Court with a line by line reading
4 and a number of specific objections, I think the type of
5 objections to which I refer are ones that would be obvious
6 to the Court in reading it, that insofar as we are going to
7 be after the trial submitting findings of fact and con-
8 clusions of law containing, I would think, references
9 to the documents, that it might be better here to proceed
10 with the idea that we will after this trial submit
11 findings of fact, conclusions of law that are cited to
12 the record and that after we have exchanged them, we can
13 then simply note by way of reply what the objections
14 to those portions on which the other side relies.

16 As your Honor knows, for example, we object on
17 the grounds of hearsay and by reason of the dead man
18 statute, to all conversations that Mr. Schmieder might
19 testify to between himself and Graupner, between himself
20 even and Mr. Hall, Sr., that I don't think it would be --

21 THE COURT: I have read your memo on that and
22 saw the authorities. I don't quite see how the dead man
23 statute works. Plaintiff isn't claiming through either
24 Graupner or Paul Hall, Sr.

25 MR. MARTIN: If that is the case, it is simply

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2 hearsay and I don't need the dead man statute.

3 THE COURT: Hearsay is now a new rule. It is
4 kind of a new ballgame.

5 MR. MARTIN: I don't think it is totally new.
6 I think these are s'tatements that are alleged to have
7 been made which the plaintiff is now seeking to introduce
8 for their truth against the estate of Mrs. Dwyer. It
9 seems to me that is hearsay which is barred, unless
10 there is some agency relationship which would give rise
11 again to the dead man statute.

12 I think it is one of two things.

13 THE COURT: The dead man statute, he can be an
14 agent for purposes of hearsay without claiming through
15 him the purpose of the dead man statute. The dead man
16 statute, and take Mr. Graupner. He was acting for Mr.
17 Hall in this transaction, I gather.

18 MR. MARTIN: I would 'hotly dispute that,
19 your Honor. I think that Mr. Graupner was acting for
20 Mr. Schmieder. If he was anybody's agent, he was
21 Schmieder's agent.

22 There are certain facts here -- and perhaps,
23 your Honor, it might be helpful to get an overall view
24 if we could make very brief opening statements here. I
25 know you have quite an inundation with the facts, but

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2 I would like that opportunity to take perhaps five to
3 ten minutes and make opening statements.

4 THE COURT: I think that might be helpful.
5 It will give you a record for appellate purposes which
6 might be helpful also.

7 So do you want to start with a brief opening
8 statement?

9 MR. DUFFY: I will be happy to, your Honor, al-
10 though I must confess that I had not anticipated, in
11 view of the Court's familiarity with this matter, that you
12 would require one.

13 Your Honor, just to put matters in perspective,
14 it is plaintiff's contention that Helen B. Dwyer was a
15 nominee in substance; that prior to recent events people
16 were under the impression that she was the nominee
17 for Kurt Schmieder, or interests of his. In fact that
18 was alleged in prior proceedings before the alien property
19 custodian and on Mrs. Dwyer's action for return of
20 vested property against the Attorney General in the
21 United States District Court for the District of Colombia.

22 THE COURT: You mean the Government alleged that?

23 MR. DUFFY: The Government alleged that. In
24 fact, on a motion for summary judgment in that action,
25 Mrs. Dwyer, seeking summary judgment, Judge Holtzoff,

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2 in denying the motion, said it seemed apparent to him on
3 the basis of the undisputed facts that she was a straw,
4 she held no beneficial title.

5 THE COURT: You are not suggesting that Judge
6 Holzoff's comment in denying the motion is binding on me,
7 are you?

8 MR. DUFFY: I think there are applicable
9 precedents in New York law that would permit a collateral
10 estoppel under those circumstances.

11 THE COURT: Not just a remark a Judge made in
12 a case which ultimately was settled.

13 MR. DUFFY: The case was dismissed with
14 prejudice.

15 THE COURT: But on settlement.

16 MR. DUFFY: There was a settlement but this was
17 a direct statement in the denial of the motion for summary
18 judgment brought by Mrs. Dwyer who was the plaintiff.

19 THE COURT: I'm not suggesting that Judge
20 Holzoff's remark might not have had a persuasive affect
21 on the Government or on the plaintiff, Mrs. Dwyer, in
22 inducing her to settle. But it certainly wasn't the
23 basis on which the settlement -- it doesn't follow
24 from the remarks the Judge made.

25 MR. DUFFY: I'm sorry, I didn't hear you, your

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2 Honor.

3 THE COURT: The judgment was entered as a result
4 of the settlement. It certainly doesn't appear to me his
5 remark was dictum.

6 MR. DUFFY: I believe there is precedent in New
7 York that would permit us to assert that as a collateral
8 estoppel.

9 THE COURT: If that is so, I am going to have to
10 be more careful on what I say from the bench in the future.

11 MR. DUFFY: We will attempt to persuade the
12 Court at the proper time that our view on the subject
13 is a correct one.

14 At that particular point the thought was Mrs.
15 Dwyer was Mr. Schmieder's nominee. We urge the Court now
16 that in actual fact she was nominee for the Hall family
17 and the Hall interests. We develop that argument by
18 tracing the relationship between plaintiff and the Hall
19 family as follows:

20 Hall's law firm was counsel to the Schmieder
21 family, we contend, and the Schmieder family business
22 interests from the early 1900s. As a result of that there
23 was a close, confidential attorney-client type of relation-
24 ship that developed between the Hall law firm, the
25 Schmieder family business and in fact members of the

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2 Schmieder family.

3 The record suggests that Louis Hall, Sr. under-
4 took some representation of plaintiff in his capacity as an
5 attorney. We will offer proof that Louis Hall, Sr. held
6 plaintiff's power of attorney.

7 Schmieder had some difficulties with property that
8 he had in this country, and we will offer proof that he
9 consulted Louis Hall, Sr. as to how best to deal with those
10 difficulties. We will show or attempt to show through a
11 chain of transactions that that property was transferred
12 to a nominee who then transferred it to a corporation
13 where members of the Hall law firm, including the present
14 defendant, were officers and directors of that
15 corporation who were instrumental in accomplishing the
16 transactions pursuant to which Mrs. Dwyer became the donee
17 of this corporation.

18 THE COURT: Is that Stoneleigh Corporation?

19 MR. DUFFY: Yes.

20 THE COURT: I thought that was the one -- did
21 Mrs. Bochman give it to the Stoneleigh Corporation?

22 MR. DUFFY: Mrs. Bochman transferred it to
23 Stoneleigh and then Stonleigh transferred it to Dwyer.

24 THE COURT: Mrs. Bochman had it for a period of
25 time?

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2 MR. DUFFY: Mrs. Bochman held it for a brief
3 period of time prior to its transfer to Stoneleigh.

4 THE COURT: And she wanted out. Now, when did she
5 decide she wanted out?

6 MR. DUFFY: Sometime in 1937 according to the
7 information available to us.

8 THE COURT: When was it transferred to Stoneleigh?

9 MR. DUFFY: In early '38 it was transferred from
10 Stoneleigh to Dwyer. She had held it for sometime through
11 1936 through March 15, 1938.

12 We will show that the choice of the donee of this
13 property was Louis Hall, Sr. and the donee that he chose
14 was his trusted personal secretary for many years,
15 who has been characterized by at least one partner of
16 the Hall firm as being very loyal to the Hall firm and the
17 whole family.

18 THE COURT: Very what?

19 MR. DUFFY: Loyal. And he had formed this
20 impression sometime prior to 1938, the time of the
21 transfer.

22 The records of the alien property custodian
23 proceedings will show that Helen B. Dwyer, upon receipt
24 of this property, used very little of it for a considerable
25 period of time.

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2 THE COURT: You understand she spent the income;
3 is that correct?

4 MR. DUFFY: I think the early record of her
5 use of this property will show she spent considerably less
6 than the income.

7 Later in her life it appears as if she spent a
8 greater portion of it but we contend she still spent
9 nothing more than the income. She never invaded the princi-
10 pal.

11 THE COURT: Does the defendant concede she never
12 invaded the principal.

13 MR. MARTIN: No, your Honor.

14 THE COURT: You do not.

15 MR. DUFFY: Upon the vesting of this property
16 by the Attorney General and throughout all of the alien
17 property custodian proceedings, the Hall law firm was instru-
18 mental in providing a defense for the actions that the
19 Government proposed to take, and in fact we will introduce
20 evidence that shows that the client, at least on the
21 books of the Hall law firm, was Stoneleigh Corporation;
22 that trips were made, telephone calls were made and
23 charges incurred and billed to Stoneleigh Corporation.

24 Even as late as the late 1940s some one or two
25 years subsequent to the dissolution of that corporation

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2 by the State of Delaware.

3 THE COURT: What is the significance of that?

4 MR. DUFFY: We would contend, your Honor, that
5 tends to reinforce our belief of the nominee relationship
6 in the Hall firm's mind that there was some client other
7 than the actual person for whom they were acting.

8 THE COURT: Did they collect these bills from
9 anybody?

10 MR. DUFFY: Yes. They were collected out of the
11 property vault.

12 THE COURT: I see.

13 MR. DUFFY: After the action was settled, the
14 U. S. District Court action was settled in 1951, Helen B.
15 Dwyer received the return of approximately 50 per cent
16 of the property that was vested. She held that property,
17 we contend, subject to the interests of the Hall family.

18 Shortly after her receipt of the property by her
19 own admission she began to make wills naming one or more
20 members of the Hall family as beneficiaries. The present
21 defendant has filed an affidavit and has testified in the
22 Surrogates Court to the effect to the effect that he
23 has himself drafted at least three wills wherein he made
24 himself and members of his family beneficiaries.

25 In addition, he has indicated that his father

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2 had done likewise while his father was still alive.

3 During the period subsequent to Helen B. Dwyer's
4 receipt of this property the plaintiff made efforts to
5 communicate with her to determine the status of
6 the property. Those efforts were directed to Mr. Hall,
7 the present defendant, and to Mr. Graupner.

8 THE COURT: When did this happen?

9 MR. DUFFY: In the period from approximately 1953
10 through 1967. Every piece of correspondence Mr. Graupner
11 received concerning these subjects was turned over to Mr.
12 Hall, as were copies of all of the letters Mr. Graupner
13 sent to Mr. Schmieder.

14 THE COURT: I asked you a question and then I
15 didn't listen to your answer. When was this correspondence?

16 MR. DUFFY: This would have been subsequent
17 to 1953 and terminating in and about 1967, your Honor.

18 During that exchange of correspondence Mr.
19 Schmieder asked a direct question; namely, where is Helen
20 B. Dwyer and how can you locate her? And the answer came
21 back: "I don't know how to locate Helen B. Dwyer."

22 Yet, I believe we will hear from the witness
23 who wrote that statement that he had significant ongoing
24 business relationships with Mr. Hall who, from his
25 testimony, will clearly show he knew how to locate Helen

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2 B. Dwyer.

3 When plaintiff was finally successful in
4 locating Dwyer through using the offices of the Swiss
5 bank in tracing the securities that he had originally
6 transferred to Bochman and then from Bochman to Stoneleigh,
7 from Stoneleigh to Dwyer, from Dwyer to the Government
8 and then from the Government back to Dwyer; Dwyer undertook
9 to establish a trust in Massachusetts.

10 We will offer evidence to show that although that
11 trust was drafted by a Massachusetts attorney, that
12 prior to its signing that Massachusetts attorney had no
13 direct contact with Helen B. Dwyer.

14 Mr. Hall and his two sisters are the remainder
15 beneficiaries of that trust. We will offer evidence to
16 show that the securities placed in that trust, in actual
17 count about 50 per cent of them, and in actual value about
18 two-thirds of the value are directly traceable to the settle-
19 ment proceeds received by the Government.

20 THE COURT: Where are the rest of them?

21 MR. DUFFY: I knew at one point, your Honor,
22 because I did track all of these down. There were some
23 mergers, and so on. There were purchases from gains made
24 on the sale of other securities, but I can't say as to the
25 balance. I can just tell you approximately as to the

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2 securities that are actually there. I would be referring
3 to securities like American Telephone, Philips Petroleum,
4 things like that. Those can be directly traced without too
5 much difficulty, we contend.

6 THE COURT: The ones that can't be traced you have
7 no claim on, I assume.

8 MR. DUFFY: No, your Honor, we do, because
9 I believe the alien property proceedings will clearly
10 delineate the property that Helen B. Dwyer had in her own
11 right and the property that she received as a result of
12 the Schmieder gift.

13 We will introduce large volumes of financial
14 records. I think it will become apparent to the Court,
15 if nothing else but Helen B. Dwyer was a compulsive
16 record keeper. We will introduce seven or eight volumes
17 of records, financial records, most in the decedent's
18 own handwriting, where she traces all of her income, gains
19 and losses on securities transactions and a variety of other
20 financial type transactions from the period preceding the
21 date until the date of her death.

22 That is briefly, your Honor, the overview of
23 plaintiff's claim against defendant. We now contend that on
24 the basis of the facts known today, that Helen B. Dwyer
25 was the nominee not for Kurt Schmieder, as was originally

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2 thought some 25 years ago or more, but for the Hall family.
3 She was the nominee for her former employer. She was the
4 nominee for the family with whom she was so close.
5 She was the nominee for the family to whom she was so loyal.

6 THE COURT: You are trying to make her the nominee
7 for Kurt Schmieder in the process of a constructive trust.

8 MR. DUFFY: I don't think that is necessary, your
9 Honor. The remedy of the constructive trust would apply
10 even if Helen B. Dwyer were innocent, as it were, if
11 she were not a participant in these transactions and she
12 received the property through someone else's wrong act.

13 THE COURT: Once you have resolved that, then
14 she becomes the nominee.

15 First, what facts that Mr. Duffy stated that you
16 contest and then get into the legal arguments.

17 MR. MARTIN: Your Honor, I suppose, in one way or
18 the other, and I did not make notes for that purpose as
19 he opened, but let's start with the most basic fact of
20 this close and ongoing relationship of Mr. Hall and Mr.
21 Schmieder. That I must vigorously contest and I don't
22 think it will be shown. Mr. Schmieder in his deposition
23 never claimed it.

24 The facts as testified to by Schmieder in his
25 deposition are that he met Hall once in 1928, in a rather

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casual visit in Leipsig when he was at Mr. Graupner's house. Mr. Graupner was a businessman. His son Herman is here and will testify. William Graupner was a businessman who was an American citizen, lived here, but maintained a home in Germany where he went for the summer. He was a client and a friend of Mr. Hall.

According to Schmieder he first met Mr. Hall at Groupner's house in Germany in 1928.

Schmieder has no recollection, at least in his deposition, of ever talking to Hall again until Schmieder says 1938. We will prove 1939, which is more than a year after the gift is made.

THE COURT: After what?

MR. MARTIN: After the gift was made. It is a year later. So that is the basis on which I dispute this. A very long dissertation by Mr. Duffy about the long and close relationship that existed, I dispute that.

I think that is important here. I don't want to burden the Court but your ruling on the character evidence I think you recognize this is a case that involves more than money. It involves the honor of people who are dead. It charges gross fraud at the outset, and what is it based on? I think you are going to find nothing. Schmieder by his testimony has no

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2 conversation of consequence with Hall until 1939, a year
3 after the gift. That is fact No. 1.

4 The fact is he is wrong. Factually it appears in
5 a number of places. One is the passport we annexed to
6 our original summary judgment motion and in some statements
7 of Mr. Hall that you will see that very finely arrived
8 from the files relating to the treasury proceeding, that
9 they did meet in 1935.

10 According to Mr. Hall's transcript, at that
11 time all that occurred was that Schmieder did ask, and they
12 met at Mr. Graupner's home when Hall was visiting there,
13 he met Schmieder. Just a side point, Mr. Hall doesn't
14 recall meeting Schmieder in 1928. Schmieder doesn't recall
15 meeting Hall in 1935.

16 Schmieder claims nothing of consequence happened.
17 Hall claims there was some general questioning by Schmieder
18 about how one would be going about setting up a corporation
19 in the States, a personal holding corporation and what
20 with the tax considerations here. There was some casual
21 conversation about that and that was it.

22 Thereafter, according to Mr. Hall's statement,
23 when Mr. Graupner returned in that fall he did tell
24 him that he asked Mr. Hall to set up a personal holding
25 corporation for a woman named Jenny Bochman who lived in

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2 Switzerland, and that corporation was set up. According
3 to Mr. Hall, he was not told that Schmieder had anything
4 to do with that. Simply he had some assumption that
5 Schmieder had talked to him and ultimately --

6 THE COURT: That was Stoneleigh?

7 MR. MARTIN: Yes, that is Stoneleigh.

8 So that is the one meeting of Hall and Schmieder
9 before the gift. The testimony of Mr. Graupner was that
10 when this gift came up, in 1937 Mrs. Bochman said she
11 didn't want to have anything more to do with this property.
12 She had a son living in Germany --

13 THE COURT: She lived in Switzerland and had a
14 son in Germany?

15 MR. MARTIN: Yes. Schmieder by his own testimony
16 had been violating the German tax laws for years, not report-
17 ing this property.

18 THE COURT: He violated the German tax laws long
19 before Hitler became a factor?

20 MR. MARTIN: Yes. He said even before the Nazis
21 he had done this.

22 She said I don't want to have anything to do
23 with him. According to Graupner, according to Hall's
24 statement, the question put to Mr. Hall was is there any
25 way this can be put into a nominee name here in this

1
2 country without disclosing the interest of the true owner?
3 He said that could not be done. His statement, which I
4 only had an opportunity to read very briefly this morning
5 and I don't know how much in detail they go into
6 this reasoning on that.

7 I submit his reasoning is not at issue. If it
8 was poor legal advice, it was poor legal advice. The
9 question here is was it fraud? The answer he gave was you
10 can't have property here for a nominee without disclosing
11 who the true owner is. That was the reply that went back
12 to Graupner, with Graupner.

13 He also said at that time if the person --
14 apparently he was told by Graupner there was severe conse-
15 quences overseas if this was discovered.

16 He said there was no way to disclose it here
17 if there was an ownership interest. The only way they could
18 do that was to make an absolute gift to somebody.

19 That is what Graupner went back and told to Mr.
20 Schmieder. Apparently Mr. Graupner was traveling back
21 every summer. He met Schmieder in the summer of '37.
22 According to Graupner's deposition when he arrived he met
23 with Schmieder and Schmieder said what about this Bochman
24 situation, and he said, as far as Mr. Hall says it would
25 have to be disclosed unless there is an absolute

1 gift. And Schmieder was not particularly happy with that
2 result and he said he would think about it.
3

4 Apparently that fall, again according to
5 Graupner, he met with Schmieder before he left and said what
6 do you want to do? At that point Schmieder said he had
7 just been down and getting inquiry from the Reichsbank.
8 He was very concerned, heads could roll and if it had to
9 be, just make a gift, dispose of it. He didn't want to show
10 an interest.

11 It was at that point Mr. Graupner said who do
12 you want to give it to? He said, I don't care. You and
13 Hall decide that. That is the point at which he said to
14 simply make a gift.

15 Graupner comes back and reports to Mr. Hall
16 and apparently there was some discussion as to who the
17 gift would be made to. Mr. Hall said how about your son?
18 And Graupner said no. And Groupner said how about your son
19 and Hall said no.

20 THE COURT: What was Hall's reason for picking
21 Mrs. Dwyer rather than the son?

22 MR. MARTIN: I haven't read Halls' statement
23 fully. But they didn't think it was good for their
24 children to have a windfall early in their lives. But
25 they finally decided, and Mr. Hall suggested Mrs. Dwyer.

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2 Your Honor mentioned a couple of times I
3 think the Government playing God in this case at one point.
4 I think if you look at this case there are only two
5 questions here. Was Mr. Hall at this point engaged in a
6 scheme to defraud? Did he really set out and say that at
7 this point I will get this property, put it in Helen's
8 name.

9 Ultimately it will get to my children or to me.

10 Or did he simply say, here is a man who by
11 his own problems and attempts to play around with his
12 local tax laws has himself in a problem and he wants to make
13 a gift, and who should get this windfall? And he makes the
14 human judgment that here is a lady, Helen Dwyer, who
15 had never had the good things in life, to whom life had
16 been rather hard. Here is a woman who had been an orphan all
17 her life, she gets married, her husband is in the Navy,
18 her husband ends up in a mental institution where he was
19 committed from the early '20s until his death. Here is
20 a lady who has never had anything life has been rather
21 cruel to her, and here is a windfall going to fall on
22 someone and wouldn't it be nice for it to fall on Helen
23 Dwyer. That's where it fell.

24 From that moment Helen Dwyer has consistently
25 said it was my property. I was told, and Mr. Hall told

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2 me, it was an absolute gift, no strings attached. Graupner
3 said Hall said the only way that Helen would take it is an
4 absolute gift, no strings attached. That is what she
5 repeatedly sworn, what Mr. Hall repeatedly swore was in fact
6 the case.

7 It is what Kurt Schmieder swore in 1948.

8 That statement in 1948 is important for another
9 reason. We talked about unclean hands and you said Mr. Hall
10 is involved in the unclean hands in that statement that it
11 can't flow through Helen Dwyer but if I have the Hall's
12 interest maybe somehow it will go through.

13 Schmieder said he signed that statement. Dr.
14 Linder brought it to him and asked him to sign it and
15 said that Mr. Graupner had asked him to sign this statement.

16 Kurt Schmieder, from the beginning of the war,
17 from 1939 had no further contact with Mr. Hall and from
18 shortly around that time had no contact with Graupner.
19 He couldn't speak to Graupner before he signed that state-
20 ment, he didn't speak to Hall before he signed that
21 statement. He personally signed that statement not
22 because somebody told him to do it, but he signed it on
23 his own. He was not in jail. He was free. He was living
24 in his home.

25 Dr. Linder came to his office --

1 Dwyer was retired. He didn't know where she lived. The
2 first thing to remember is that the first letter that
3 Mrs. Herman Graupner sent in this chain said, when Schmieder
4 made some inquiry, he said that gift that was made in 1938
5 was an absolute gift with no strings attached.
6

7 THE COURT: This letter of Graupner's?

8 MR. MARTIN: Letter of Herman Graupner sent
9 to Mr. Schmieder. An absolute gift with no strings
10 attached.

11 The only reason Mrs. Dwyer would take it,
12 the only reason Mr. Hall would have any part of it, and
13 so there is no reason for contacting Mrs. Dwyer. She
14 has gone through a difficult time with the alien property
15 custodian, which she, a loyal citizen, was accused
16 of holding something for an enemy of her country.
17 I don't think she is going to be very sympathetic to
18 anything from you at this moment.

19 So that was the touchstone which all the
20 correspondence followed.

21 THE COURT: What did Schmieder answer to that?

22 MR. MARTIN: The responses are vague. I find
23 it difficult to summarize them, your Honor. I think it
24 ultimately did end up with Schmieder finding out
25 where Mrs. Dwyer was and his sending a cablegram and at

1
2 that time she retained Judge Sanborn to represent her.
3 He was a man, up until the early '50s, who had been a
4 member of the Putney Twombly law firm. In 1952 or '53
5 he became a judge of the Supreme International Court which
6 had been set up in Germany after the war, set up by
7 the occupying powers.

8 His position in Germany is comparable in that
9 structure to our Supreme Court here. He had been a judge
10 for many years and came back and he was in a semi-retire-
11 ment situation. Mrs. Dwyer, when she was contacted by
12 Schmieder, retained him.

13 He on her behalf sent a number of letters saying
14 Mrs. Dwyer does not want to see you. This property was
15 an absolute gift to her and that is the only reason
16 on which she took it and she has no interest in meeting
17 with you and I suggest you do not come if that is the
18 purpose of your visit.

19 So that in brief summary, your Honor, are the
20 facts that I think do exist here. The only thing that
21 Louis Hall, Sr. was guilty of was doing something nice
22 for a lady who never had anything nice in her life.
23 The only reason she took it was on his assurance that
24 it was an absolute gift and the only reason he allowed
25 her to take it was because it was an absolute gift.

1 The thing the fact thereafter that they brought in
2 somebody of the caliber of Mr. Medalli and she brought
3 in Judge Sanborn later on is some indication these were
4 not people who were setting out to defraud anyone.
5

6 THE COURT: Who suggested Mr. Medalli?

7 MR. MARTIN: Apparently Mr. Hall. That is not
8 totally clear. But it seems to me if this was a scheme
9 to defraud none of this would have happened. There would
10 not have been any requirement. The requirement was far
11 from clear that she had to report this at all but they
12 did it because they wanted to do what was right and what
13 was legal. If there was any question they wanted it reported.
14

15 I think their reputation is being challenged
16 by a man on his own admission is a tax evader and perjurer.

17 THE COURT: It seems to me the plaintiff clearly
18 has the burden of proof to establish that Mrs. Dwyer
19 was a nominee of or acting for Mr. Hall. If he establishes
20 that, then the burden would shift off the defendant to
21 explain the validity of the action as taken.

22 MR. MARTIN: I think there are two things that I
23 would just disagree with very briefly, your Honor. I
24 think he has the burden in the first instance of proving
25 that there ever was this alleged agreement, which he is
the only one who has ever said there was. That is the

1 first instance, which I think the proof fails on.

2 THE COURT: Actually they will go together
3 but there would be no purpose in such an agreement --

4 MR. MARTIN: You are right. What you are really
5 saying here is somehow they are saying here there was a
6 fraud. What you have to have in a fraud is a motive.
7 If you take Schmieder's property and make it Hall's,
8 if that doesn't follow, then the whole case falls.

9 THE COURT: Let's proceed then.

10 MR. DUFFY: Your Honor, we have located the
11 two transcripts to which I referred previously. They
12 were in the court files. The 1970 transcript is 26-A.

13 (Government's Exhibit 26-A marked in
14 evidence.)

15 THE COURT: Without going into all the detailed
16 objections you may have, what do you say these transcripts
17 establish?

18 MR. DUFFY: These transcripts establish the
19 understanding pursuant to which Schmieder delivered the
20 property or agreed to follow Hall's advice and also
21 establishes that he was a person who would be entitled
22 to have the return of his vested property if he had
23 received the property in the alien property custodian
24 proceedings.

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2 THE COURT: There must be certain parts of that
3 transcript which more or less establish that. What parts
4 of that transcript establishes these two things?

5 MR. DUFFY: I have not gone through that word
6 by word and line by line for that purpose, your Honor.

7 THE COURT: Mr. Martin says it doesn't establish
8 any such thing, I assume.

9 MR. MARTIN: Even I would admit, your Honor,
10 that at some point Mr. Schmieder says in that transcript
11 that he told Graupner or Graupner said to him that this
12 property would be kept with some agreement, and that
13 ultimately it might be willed to his children.

14 He does make some claim. He also says that he met
15 with Paul in Leipsig in, as he said, '38, and we have
16 the records to show '39.

17 THE COURT: You have a record to show --

18 MR. MARTIN: I have the passport file to show
19 the passports we have are the only passports in existence
20 and it shows he was there in '39. Again I think Mr. Hall's
21 statements to the Government that I reviewed this morning
22 may even have some reference to that. I think there was
23 a meeting in 1939. At that point Mr. Hall was trying
24 to get Mrs. Bochman to sign a gift tax return. She
25 didn't want to sign anything. That was apparently a

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2 problem and he met with her and he may have met with
3 Schneider to ask him to ask her to sign those returns.
4 There is some indication there was a meeting in '39.

5 We have at various points in some of the memos
6 quoted Schmieder about that meeting and he says that I had
7 talked about the agreement with Graupner and that was
8 touched on with Hall at this meeting. That is a post-event
9 meeting.

10 Here again, your Honor, I think there are some
11 objections to relevance. For example, there is questioning
12 about all this chain of correspondence that begins in '53,
13 et cetera. I have some questions of simply hearsay,
14 the questions I raised before that are these conversations
15 with Graupner admissible. Some of competence, as you
16 know from my memo and I wouldn't want to waive the point,
17 I believe that Mr. Schmieder in 1938 did not have any
18 ownership interest in that property because of the
19 transfer to Bochman to violate German law.

20 I have those objections there. I would that
21 we follow the procedure, simply rather than having us
22 read long portions to you, they are before the Court
23 in the post-trial memoranda. To the extent Mr. Duffy
24 relies on this in his summation I will reply to that
25 as to why --

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THE COURT: This exchange has been helpful.

MR. DUFFY: I was going to make the same suggestion. In our post-trial memorandum we would be citing to certain portions of these transcripts. We would propose to address those objections in the transcript if we were going to cite those sections.

(Plaintiff's Exhibit 27-A received in evidence.)

MR. DUFFY: I would next like to introduce the transcript of the examination of William B. Putney III taken on November 1, 1971.

MR. MARTIN: We have premarked, your Honor, a number of the transcripts from the Surrogate Court proceeding of various people who testified people who witnessed the will and executed it.

I have Mr. Putney's transcript here.

Mr. Duffy, do you want to introduce all of those as a group?

THE COURT: Mr. Putney was a witness to the will?

MR. DUFFY: Mr. Putney was a witness to a former will and a partner of Mr. Hall's.

THE COURT: What is this transcript to prove?

MR. DUFFY: He was an officer and director of Stoneleigh Corporation.

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2 THE COURT: I know but what do you propose
3 to prove by this transcript?

4 MR. DUFFY: To prove some transactions as to
5 Stoneleigh Corporation.

6 THE COURT: Give me what they are.

7 MR. DUFFY: An expression from Mr. Putney
8 as to his opinion of Mrs. Dwyer's loyalty to the Hall law
9 firm and the Hall family.

10 THE COURT: Does anybody contest that Mrs.
11 Dwyer was loyal to the Hall law firm?

12 MR. MARTIN: I'm very happy to have this in,
13 your Honor.

14 THE COURT: I'm not. I don't want to read any-
15 thing I don't have to read. Why do I have to read these
16 transcripts is what I am trying to find out? You are
17 offering it to show that Mrs. Dwyer was loyal to the firm
18 and that is obvious. What else?

19 MR. DUFFY: That opinion was formed prior to
20 1938.

21 THE COURT: Obviously. That is conceded,
22 is it not?

23 MR. MARTIN: Yes.

24 MR. DUFFY: Mr. Putney states that the Hall
25 law firm was counsel to Garfield Worsted Mills, the

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2 Schmieder family corporation.

3 THE COURT: Garfield what?

4 MR. DUFFY: Worsted Mills. The Schmieder
5 family was the founder of that corporation.

6 THE COURT: Is that conceded?

7 MR. MARTIN: Let's go back a little bit in
8 history. My understanding and it should be subject to
9 proof, there is nothing in Mr. Putney's deposition that
10 indicates this was the Schmieder family property.
11 My understanding, your Honor, is that the family property,
12 whatever interest the family had, was seized by the alien
13 property custodian in the first World War. What they got
14 back was not the mills, it was the proceeds of a sale
15 that had been made. So that all there was -- you may recall
16 from the memo, in 1928 I think it was, the property was
17 returned. My understanding was that Schmieder got back
18 cash or securities.

19 THE COURT: The deposition proves, for whatever
20 it is worth, that the Putney firm was counsel to this
21 corporation?

22 MR. DUFFY: At the time when the Schmieder
23 family had an interest, we will show --

24 THE COURT: The Putney deposition doesn't show
25 that. It just shows that he was counsel to the law firm

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2 at a certain time?

3 MR. DUFFY: That the law firm was counsel to
4 Garfield Worsted Mills, yes, sir.

5 THE COURT: At what period of time?

6 MR. DUFFY: I would have to check the transcripts.

7 THE COURT: This is just what I don't want to
8 do. I don't want to go through the transcript to find
9 out why you are offering it. If you can't tell me
10 why you are offering something, I am going to exclude it.

11 MR. DUFFY: Your Honor, we have these items
12 all marked on index cards.

13 THE COURT: You had this case now long enough
14 so you ought to be able to answer a question. How
15 come you got it marked somewhere?

16 MR. DUFFY: At page 39 the following --

17 THE COURT: Tell me what it is. If it is conceded
18 we don't have to worry about the transcript.

19 MR. DUFFY: Would you like me to read it?

20 THE COURT: No. Tell me what you are trying to
21 prove. You certainly must know that. Don't read me a lot
22 of junk. Tell me what you are trying to prove. I am
23 going to ask Mr. Martin if he concedes. If he does,
24 that is the end of it.

25 MR. DUFFY: I am trying to prove that the

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2 Hall law firm was counsel to the Garfield Worsted Mills --

3 THE COURT: What period? Giving me a date.
4 What dates?

5 MR. DUFFY: Before 1914.

6 THE COURT: Do you concede that, Mr. Martin?

7 MR. MARTIN: Let me just check.

8 (Pause.)

9 MR. MARTIN: Let me see what the transcript
10 says. I will concede whatever the transcript says. That
11 is all I can do.

12 MR. DUFFY: Your Honor, you have to tie in
13 several transcripts.

14 THE COURT: Tell me what this transcript is
15 trying to prove?

16 MR. DUFFY: That the firm was counsel to Garfield
17 Worsted Mills. It is not identified in time. We have
18 to look through another transcript.

19 THE COURT: We don't put that transcript in
20 for the time.

21 What transcript proves the time?

22 MR. DUFFY: The Graupner transcript of 1950. That
23 is the William Graupner transcript.

24 THE COURT: This transcript merely shows he was
25 counsel to that firm and that is conceded. We don't need

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2 the transcript for that. What do we need it for,
3 anything else?

4 MR. MARTIN: I would on the basis of that like
5 to offer one question and answer which said, "Do you
6 know whether Kurt Schmieder owned stock in Garfield
7 Worsted Mills?"

8 And the answer is:

9 "No."

10 THE COURT: Anything else you want that transcript
11 for?

12 MR. DUFFY: I also would offer this transcript
13 to establish which members of the Hall law firm were active
14 in the alien property custodian proceedings.

15 THE COURT: Tell me and we will see if it is
16 conceded.

17 MR. DUFFY: That would be Louis Hall, Jr.,
18 and Fredrick Sanborn, Louis Hall, Sr.

19 THE COURT: Those three people active?

20 MR. MARTIN: They all had some connection with
21 the alien property custodian proceeding.

22 THE COURT: All right, that is conceded.

23 MR. DWYER: I will not offer the transcript then.

24 THE COURT: All right.

25 MR. DUFFY: I would now offer the Fredrick Sanborn

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2 transcript that Mr. Martin had during his opening statement.
3 I would offer this transcript, your Honor, to show that
4 Mr. Sanborn, a partner in the Hall law firm, and active
5 participant in the defense of the actions of the U. S.
6 Government to investigate this property, testified that
7 Mr. Schmieder in his opinion was an individual of the lowest
8 type of character.

9 THE COURT: Is that conceded?

10 MR. MARTIN: Stipulated.

11 (Laughter)

12 THE COURT: It is conceded he so testified.

13 MR. DUFFY: And throughout the proceedings the
14 charges for legal services rendered to Mrs. Dwyer were
15 billed to Stoneleigh Corporation.

16 THE COURT: Is that conceded?

17 MR. MARTIN: There were bills rendered to
18 Stoneleigh Corporation, your Honor. I don't know if
19 they were all of them but whatever the transcript says
20 on that. Show me a reference and I'll be happy to
21 stipulate to that portion of it. I just can't answer the
22 blanket question.

23 There are records that also indicate at the
24 ultimate settlement that the fees could not exceed a
25 certain percentage of the recovery.

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There are affidavits Mr. Duffy has marked for admission here saying that the Putney Twombly firm, among others, got fees out of those proceedings.

THE COURT: We ought to be able to stipulate as to what the amount of fees were and who they were billed to.

MR. DUFFY: In answer to Mr. Martin's question I have a summary of cash advances to Stoneleigh Corporation from May 1944 to October 1951. It is referred to in the transcript, in the same transcript, and it notes --

THE COURT: Show it to Mr. Martin.

(Pause.)

MR. MARTIN: I don't object.

MR. DUFFY: I am not offering that particular document per se.

MR. MARTIN: This is a very bad copy, your Honor. It does indicate some charges in the amount of a couple of hundred dollars. It is dated May 1944 to October of '51, summary of cash advances and it says at the top, "Stoneleigh."

THE COURT: In substance, I gather you concede that some bills were sent?

MR. MARTIN: That some billings were done on the books of Putney Twombly and Hall for this and carried

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2 under a Stoneleigh billing.

3 THE COURT: Stoneleigh at this point was a
4 nonexistent corporation?

5 MR. MARTIN: I believe it had been dissolved
6 at that point.

7 THE COURT: For whatever it is worth that
8 is conceded, I would think. So we don't need the transcript
9 for that, or do we?

10 MR. DUFFY: No. I think we are conceding
11 that the bills within the law firm were charged to
12 Stoneleigh Corporation or for Mrs. Dwyer's legal services
13 in connection with the alien property custodian proceedings
14 and her claim against the Attorney General for the
15 vested property; is that correct?

16 MR. MARTIN: I'm not so sure I can concede that
17 readily, Mr. Duffy, that it was billed to Stoneleigh.
18 It was re Stoneleigh. Whether Stoneleigh was not in
19 existence. I simply think this is a way to identify
20 a particular account.

21 THE COURT: You can then offer the transcript
22 to the extent the details of that are necessary, and I
23 will read it. If I don't think the details of it are
24 necessary, I won't.

25 MR. DUFFY: That is 15-A, and the document that

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2 I was referring to a moment ago, the summary of cash
3 advances, is Objectant's Exhibit 9 to the transcript.

4 MR. MARTIN: I have the Sanborn exhibits here.
5 Maybe you can show us what you want.

6 (Defendant's Exhibit 15-A received in
7 evidence.)

8 MR. MARTIN: You want this as a separate exhibit,
9 Mr. Duffy?

10 MR. DUFFY: 15-B on our schedule is the exhibits
11 and that is one of the exhibits.

12 MR. MARTIN: Can we make that 15-B-1?

13 THE COURT: Yes, 15-B-1.

14 (Plaintiff's Exhibit 15-B-1 is received in
15 evidence.)

16 MR. DUFFY: Your Honor, if I might direct your
17 attention to the pretrial order, the exhibits under 11-
18 A, B, C, D, E --

19 THE COURT: Which pretrial order are you talking
20 about?

21 MR. DUFFY: Either one. On our pretrial order
22 it would be --

23 THE COURT: Let's keep to his.

24 MR. DUFFY: It would be Plaintiff's Exhibits as to
25 which there is an objection, your Honor.

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THE COURT: What page of his pretrial order?

MR. MARTIN: Page 4, your Honor.

MR. DUFFY: I would offer that series of exhibits for the purpose of showing the nature --

THE COURT: This is 11-A, B, C, D, E?

MR. DUFFY: Yes. For showing the nature and extent of the involvement of the Hall firm in the proceedings against the Attorney General to recover vested property.

THE COURT: Didn't they represent Mrs. Dwyer in that proceeding?

MR. DUFFY: There were two other law firms involved.

MR. MARTIN: Two others. In Washington, one of which was more involved in the blocking and the vesting. When they brought suit there was another firm who came in to handle the proceedings in Washington. The suit was in the District of Columbia. The Hall firm also acted in the case.

THE COURT: The Hall firm was New York counsel and they retained Washington counsel.

MR. MARTIN: Yes.

THE COURT: Why a lot of documents to elaborate on that?

MR. DUFFY: I'm offering it to show the substantial

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2 nature of the involvement.

3 THE COURT: I will take judicial notice if
4 the Hall firm retained a Washington firm to prosecute
5 a suit in Washington they would continue to be substantially
6 involved. Is there anything more than what you would
7 expect of New York counsel who retained Washington counsel?

8 MR. DUFFY: Well, I know some different firms
9 work in different ways, your Honor. I think the
10 affidavit and the exchange of correspondence --

11 THE COURT: Different ideas of how to effectively
12 prosecute a lawsuit. Hall retained counsel for the purpose
13 of winning this lawsuit and therefore for one reason or
14 another they did everything they thought was necessary
15 to win it. Is this what the exhibits show?

16 MR. DUFFY: That is one interpretation.

17 THE COURT: What other interpretation is there?
18 Assuming Mrs. Dwyer was an angel from heaven or assuming
19 she was drawn out of the depths of hell to plague
20 Mr. Schmieder, how would the Hall firm act any differently
21 in this suit against the Government?

22 MR. DUFFY: If it is clear in your Honor's
23 mind that the involvement was more than minimal and
24 inconsequential.

25 THE COURT: I would say that the Hall firm would
take -- I would take judicial notice that when it retains

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2 Washington counsel to prosecute a lawsuit it doesn't
3 get itself minimally or inconsequentially involved in that
4 lawsuit. Would you accept that?

5 MR. MARTIN: Yes.

6 THE COURT: That is all these things prove and
7 therefore I sustain the objection on the ground of
8 relevance.

9 MR. DUFFY: If your Honor would refer to
10 Exhibits 4-A, B and C. That would be the preceding page.
11 Now, as I understand Mr. Turchin's marking he notes
12 authenticity. My recollection is that the defendant is
13 conceding authenticity only but reserves every other
14 objection?

15 Am I correct?

16 THE COURT: That is page 4 of your pretrial order.

17 MR. MARTIN: Again, your Honor, this is a
18 transcript of Mr. Graupner given in connection with the
19 various alien property proceedings. We do not contest
20 that is an authentic transcript. I think it would be
21 best to handle that the way we dealt with Mr. Schmieder's.
22 It does deal with the nature of the gift.

23 THE COURT: Mr. Graupner is going to be here?

24 MR. MARTIN: This is Mr. William Graupner who
25 is the father of Herman. He died, Mr. William Graupner,

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2 in 1954. I think the best way to handle that is the way
3 we handled the Schmieder deposition.

4 THE COURT: You concede it was a proper transcript
5 of whatever went on before the Treasury Department?

6 MR. MARTIN: Yes. My hearsay objection, your
7 Honor, is not one to the entire transcript because I
8 think under the new rules it is testimony in a prior
9 proceeding and I think that is one of the exceptions.

10 THE COURT: You are not objecting to the
11 fact that the transcript is hearsay, you would object
12 as he was now on the witness stand saying the same thing
13 it would be hearsay?

14 MR. MARTIN: Yes. There are obviously some
15 portions of it which I want to use but we can handle
16 that better in the post-trial briefs.

17 MR. DUFFY: Your Honor, I apologize for returning
18 to this subject. One of my colleagues informs me that
19 the stipulation we had on the record with respect to the
20 Hall firm's involvement in the Washington proceedings for
21 return of vested property is unclear. I would like to
22 try to clarify with Mr. Martin. It would be our contention
23 that the Hall firm held the laboring or in that proceeding,
24 reviewed all the papers, made all the decisions and
25 Washington counsel was nothing more than in the position

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2 of filing papers and acting as a liaison between the
3 Court and the Hall firm.

4 MR. MARTIN: I don't know how relevant, your
5 Honor, that is but I have to object to its accuracy.
6 Perhaps the easiest thing, there are in the Government's
7 files affidavits from each of the three lawyers involved.
8 My recollection is that there was something like a 10
9 per cent limit on fees. All the lawyers that were involved,
10 Mr. Landa, somebody from the other firm, the Bureau's
11 firms, and Judge Sanborn on behalf of the Hall firm --

12 THE COURT: I can't see how it has the slightest
13 relevance. The Hall firm retained Washington counsel to
14 prosecute this lawsuit. Thereby they indicated their
15 desire to win it. How they distributed the labor among
16 themselves, whether the Hall firm did all of the work or
17 none of it or whether the Hall firm was so impressed
18 with the Washington firm and wanted them to do all the
19 work is irrelevant.

20 MR. DUFFY: It is relevant when you consider
21 who was making the decisions.

22 THE COURT: The Hall firm wanted to win the lawsuit.
23 If the Hall firm retained somebody they thought would be
24 more competent to win the lawsuit, the only purpose
25 in bringing that lawsuit was to win it. What difference

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2 does it make who made the decisions? I can't see what
3 you are driving at.

4 MR. DUFFY: Perhaps it will become clearer
5 later on.

6 THE COURT: If you can make it clearer I will
7 reopen it. I can't see the possible relevance.

8 (Plaintiff's Exhibits 4-A, 4 B and 4-C
9 received in evidence.)

10 MR. DUFFY: I would now offer Plaintiff's Exhibit
11 6, which is the pretrial order. I offer it for the
12 purpose of showing that Mrs. Dwyer and her counsel conceded
13 that Stoneleigh Corporation was incorporated upon
14 instructions received from Kurt Schmieder.

15 THE COURT: Is that disputed?

16 MR. MARTIN: Your HONor, I think there are certain
17 facts in dispute here that really have to do -- obviously
18 Graupner testifies that Schmieder gave those instructions.
19 Nobody, Mr. Hall or Mrs. Dwyer, ever testified to that.

20 My objection to this document is basically that
21 it seems to me this is a matter prepared for litigation
22 wherein that litigation they were willing to concede
23 certain facts. I am not willing to make those concessions
24 here because I think there is a burden on the plaintiff
25 to show some of those facts because to show those facts

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will show the history of those facts.

THE COURT: Let me see the document.

(Pause.)

MR. DUFFY: Your HONor, may I be heard on that?

THE COURT: Yes.

MR. DUFFY: That is a document signed by the attorney for Mrs. Dwyer, one of the attorneys for Mrs. Dwyer. It is also signed by the Court. I believe that is properly admissible under Rule 801(d)(2) as an exception to hearsay, inasmuch as it is an admission by a party opponent and it is a statement by a person authorized on behalf of the party to make it.

THE COURT: Mr. Martin, it does seem to me admissible. I think your argument is available as to its persuasiveness.

MR. MARTIN: I think it goes to its competence. It seems to me, like any stipulation, a stipulation of settlement may be arrived at to dispose of issues in a particular lawsuit without conceding that for all purposes those are necessarily valid. That is the basis of my objection, your Honor. I think it is like a settlement which is designed to prove nothing. It is simply a way of expediting a particular piece of litigation.

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2 THE COURT: I understand that. That seems to
3 me to go to its persuasiveness. It seems to me it is
4 technically admissible under this new rule.

5 MR. MARTIN: I was just wondering what your
6 Honor's schedule is. Do you break in the middle of the
7 morning or not? Mr. Schaeffer is here and he has those
8 documents that were located this morning.

9 THE COURT: I am sure the stenographer will
10 appreciate a break.

11 I take it neither side has ordered a daily
12 transcript.

13 MR. MARTIN: No, your Honor. Unless your
14 Honor thinks it is necessary.

15 I had not intended it to be ordered on a daily
16 basis.

17 THE COURT: I don't know how you are going to get
18 your trial memoranda or post-trial memoranda done in some
19 reasonable period of time.

20 MR. MARTIN: If your Honor feels that we should
21 proceed with that expedition, well. I thought we
22 could probably wait. That is up to your Honor on that.
23 If your Honor feels that daily will be preferable.

24 THE COURT: I would much prefer to get your
25 briefs while this is still hot in my mind so I don't have

to forget everything and then remember it again.

MR. MARTIN: Then we will ask for daily copy.

(In open court.)

MR. DUFFY: Your HONOR, if I might continue, I would like to introduce Exhibits 2-A and 2-B, which is a transcript of testimony given by Louis Hall, Sr., an affidavit of Louis Hall, Sr. in connection with the alien property custodian proceedings.

THE COURT: The objection is not marked. What does that mean?

MR. DUFFY: We just received these documents from the U. S. Attorney's Office.

MR. MARTIN: We had last week marked all of these making our own notations and we did not have these until this morning.

THE COURT: So you don't object to these?

MR. MARTIN: We don't.

THE COURT: Just in general what do these documents prove?

MR. DUFFY: These documents reflect Mr. Hall's own comments or thoughts on the views that he had given that the property must be given away absolutely and also his rendition of the transactions leading up to the gift.

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2 MR. MARTIN: In summary what they prove is that it
3 was an absolute gift with no strings attached.

4 THE COURT: I see I can't get you to stipulate
5 on those and I will have to read them.

6 MR. DUFFY: I would like to introduce --

7 MR. MARTIN: Just so I can keep my records straight,
8 Mr. Duffy, can we know what is 2-A and what is 2-B?

9 MR. DUFFY: If you look at the pretrial order the
10 transcript is marked as A and the affidavit is marked as B.

11 (Plaintiff's Exhibits 2-A and 2-B are received
12 in evidence.)

13 MR. DUFFY: I would now like to introduce Exhibit
14 3, as it is identified in the pretrial order. That is a
15 letter dated September 22, 1949, from Louis Hall, Sr. to
16 George Pendleton. The purpose for which I would introduce
17 this, your Honor, is to show that Mr. Hall held Schmieder's
18 power of attorney.

19 MR. MARTIN: I object to the characterization.
20 I'm not sure if it is all in here, but there is in one of
21 the transcripts, and it may be Mr. Graupner's, it may be Mrs.
22 Dwyer's in the alien property proceeding, some question
23 came up as to the power of attorney running to Mr. William
24 Graupern and Mr. Hall from Mr.- Schmieder that was filed
25 with the Bankers Trust Company in 1929.

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2 Mr. Hall stated that he had heard that there was
3 such but he never knew anything of it. So my objection
4 simply to the relevance and also I just want to make sure
5 that the record is complete. I didn't realize that was
6 the purpose of this letter. There is some reference to it
7 here and I really have no objection to the letter as such,
8 your Honor, other than to the relevance.

9 THE COURT: What is the language in it you are
10 offering?

11 MR. DUFFY: I'm sorry, did you ask me a question,
12 your Honor?

13 THE COURT: This says, "Until questioned by
14 foreign funds controlled, I was unaware of the existence
15 of this power of attorney and had never acted under it."

16 What does that prove against Mr. Hall?

17 MR. DUFFY: I'm offering it to show the existence
18 of the power.

19 THE COURT: I take it that is not disputed, the
20 fact there was a power.

21 MR. MARTIN: What is not disputed is that Mr.
22 Hall was informed by the foreign asset control that there
23 was such a power.

24 THE COURT: You have never seen it?

25 MR. MARTIN: I have never seen it.

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1 THE COURT: All this proves is that Mr. Hall
2
3 was told the foreign fund control that Mr. Schneider did,
4 without his knowledge or the knowledge of Mr. Graupner,
5 send the New York Trust Company a power of attorney.
6 I don't see that that proves much.

7 MR. DUFFY: We are offering it to show the power
8 of attorney, your Honor.

9 THE COURT: I reject it for that purpose because
10 it doesn't tend to show it.

11 MR. DUFFY: I would offer Exhibit 8, an affidavit
12 of Jenny Bochman, sworn to on February 5, 1948. The
13 affidavit states in substance that Kurt Schmieder was the
14 owner of the assets of Stoneleigh Corporation and that she
15 had no interest, beneficial interest in it.

16 THE COURT: What is your objection to it?

17 MR. MARTIN: Hearsay, your Honor.

18 THE COURT: Of course it is a declaration against
19 interest.

20 MR. MARTIN: It is not because there was an
21 absolute gift of the property made in '38. She is on record
22 as saying this is an absolute gift.

23 MR. DUFFY: Your Honor --

24 MR. MARTIN: Indeed it is a statement in her
25 interest because I think the history of this is that there

